

No. 1425

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

PUGET SOUND NAVIGATION COMPANY (a Corporation),

Plaintiff in Error,

vs.

MARY R. LAVENDER, CHARLES STANLEY and
SAMUEL BARLO,

Defendants in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States Circuit
Court for the Western District of Wash-
ington, Northern Division.

FILED

FEB 13 1907

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*United States Circuit Court for the District of Wash-
ington.*

No. 1296.

MARY R. LAVENDER,

vs.

THE PUGET SOUND NAVIGATION COM-
PANY, et al.

Appearance for Defendant.

To the Clerk of the Above-entitled Court:

You will please enter our appearance as attorneys for defendant The Puget Sound Navigation Company, in the above-entitled cause.

IRA BRONSON and
D. B. TREFETHEN,

Attorneys for Defendant, The Puget Sound Navigation Company.

[Endorsed]: Appearance. Filed in the U. S. Circuit Court, Western Dist. of Washington. May 1, 1905. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

United States Circuit Court for the Western District of Washington.

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION CO. (a Corporation), CHARLES STANLEY and SAMUEL BARLO,

Defendants.

Appearance for Plaintiff.

To the Clerk of the Above-entitled Court:

You will please enter our appearance as attorneys for the plaintiff, in the above-entitled cause.

BYERS & BYERS.

[Endorsed]: Appearance. Filed May 10, 1905.
A. Reeves Ayres, Clerk. A. N. Moore, Deputy Clerk.

In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY OF OREGON (a Corporation) et al.,

Defendants.

Answer.

Comes now the Puget Sound Navigation Company and for answer to the complaint of the plaintiff herein alleges as follows, to wit:

1. Referring to paragraph 3 this defendant denies each and every allegation therein contained.

2. Referring to paragraph 4 this defendant denies each and every allegation therein contained.

3. Referring to paragraph 5 this defendant admits that R. O. Lavender was employed upon said vessel on the 3d day of November, 1904, and admits that said steamer on said day made a trip from Bellingham, Washington to Seattle, Washington, but denies that the said R. O. Lavender was ordered or directed by the defendant Samuel Barlo or by anyone else, and except as hereinbefore specifically admitted, the defendant denies each and every other allegation in said paragraph contained.

4. Referring to paragraph 6 this defendant has not sufficient knowledge to form a belief as to the truth or falsity thereof, and therefore denies the same.

5. Referring to the allegations contained in paragraph 7 of said complaint this defendant denies that the said R. O. Lavender was capable of earning, or did earn, at the time set forth the sum of \$150.00 per month or any sum in excess of forty dollars per month.

And for a further affirmative defense to the complaint of the plaintiff herein this defendant alleges that if the said R. O. Lavender came to his death or was drowned at the time set forth in plaintiff's complaint, or at any other time or place that such death resulted entirely from the fault, negligence and carelessness of the said R. O. Lavender, and not from any fault or negligence on the part of the defendant, Puget Sound Navigation Company contributing in any way thereto.

And for a further second affirmative defense to the plaintiff's complaint herein the Puget Sound Navigation Company answers as follows, to wit:

1. That if the said R. O. Lavender came to his death or was drowned at the time set forth in the plaintiff's complaint, or at any other time or place, said death resulted from the fact that the said R. O. Lavender was in a dangerous place and in a dangerous position incidental to his employment, all of the risks and dangers of which the said R. O. Lavender assumed and with the extent of which the said R. O. Lavender was better informed than the defendant, Puget Sound Navigation Company.

And for a further affirmative third defense the defendant Puget Sound Navigation Company alleges that if the said R. O. Lavender came to his death at the time or place set forth in the plaintiff's complaint, or at any other time or place, said death re-

sulted, if by reason of anybody's carelessness or negligence, other than the carelessness and negligence of the said R. O. Lavender, then from the carelessness and negligence of the fellow servants of the said R. O. Lavender.

IRA BRONSON and
D. B. TREFETHEN.
Attorneys for Defendant.

State of Washington,
County of King,—ss.

F. E. Burns, being first duly sworn, on oath deposes and says as follows, to wit: That he is the Asst. Treasurer of the Puget Sound Navigation Company, defendant in the above entitled cause; that he has read the foregoing answer, knows the contents thereof and believes that the facts therein stated are true.

Subscribed and sworn to before me on this 20th day of June, 1905.

D. B. TREFETHEN,
Notary Public in and for the State of Washington,
Residing at Seattle.

Receipt of a copy and due service admitted this 20th day of June, 1905.

BYERS & BYERS,
Attys. for Plaintiff.

[Endorsed]: Answer. Filed June 21, 1905. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the United States Circuit Court, Western District
of Washington, Northern Division.*

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY OF
OREGON (a Corporation) et al.,

Defendants.

Reply.

Comes now the above-named plaintiff and for her reply to the answer of the defendant Puget Sound Navigation Company herein says:

1. She denies each and every allegation contained in said defendant's first affirmative defense.
2. Plaintiff denies each and every allegation contained in the second affirmative defense of said defendant's answer.
3. Plaintiff denies each and every allegation contained in the third affirmative defense of said defendant's answer.

Wherefore, plaintiff demands judgment as in her complaint herein.

BYERS & BYERS,
Attorneys for Plaintiff.

State of Washington,
County of King,—ss.

Mary R. Lavender, being duly sworn, says: That she is the plaintiff in the above-entitled action; that she has read the foregoing reply, knows the contents thereof and believes the same to be true.

MARY R. LAVENDER.

Subscribed and sworn to before me this 26th day of June, 1905.

CECIL A. BYERS,
Notary Public, Residing at Seattle, Washington.

Due service hereof by copy admitted this 26th day of June, 1905.

IRA BRONSON and
D. B. TREFETHEN,
Attorneys for Deft.

[Endorsed]: Reply. Filed in the U. S. Circuit Court, Western Dist. of Washington. Nov. 6, 1905.
A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

(June 28, 1906.)

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation), CHARLES STANLEY and
SAMUEL BARLO,

Defendants.

Order Granting Leave to File Amended Complaint.

Now, upon this day, upon application of the attorney for the plaintiff, it is ordered by the Court that the plaintiff be and she is hereby allowed to file an amended complaint herein. The answer to the plaintiff's complaint to stand as the answer to the amended complaint.

Recorded in General Order Book, Circuit Court,
Vol. 1, page 232.

*In the United States Circuit Court for the Western
District of Washington, Northern Division.*

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation) et al.,

Defendants.

Amended Complaint.

Plaintiff complains against defendants and for cause of action alleges:

I.

That the defendant the Puget Sound Navigation Company is a corporation organized, created and existing under and by virtue of the laws of the State of Oregon.

II.

That the defendant, the Puget Sound Navigation Company is the owner and operator of a certain steamer called the "Lydia Thompson" being run and operated upon the waters of Puget Sound.

III.

That the defendant Charles Stanley is the pilot and mate of the said steamer "Lydia Thompson."

IV.

That the defendant Samuel Barlow is the captain and acting master of said vessel.

V.

That on the 3d day of November, 1904, R. O. Lavender was employed upon the said vessel in the capacity of watchman. That as the said steamer was proceeding on its trip from Bellingham, Washington, to Seattle, Washington, and on or about four o'clock on the morning of the said day the said R. O. Lavender was ordered and directed by the said defendant Charles Stanley to open the port on the port side of said vessel preparatory to making the landing at the wharf at Olga. That the port of said vessel was so defectively and dangerously constructed and in such poor repair that it was dangerous for one man to open the same and that the said defects were known to the said defendant, Puget Sound Navigation Company of Oregon, or by ordinary care should have been known to the said defendant, and were unknown to the said R. O. Lavender, and that when the said R. O. Lavender attempted to and did open the said port, he slipped through the said opening and fell into the waters and was drowned. That after the said R. O. Lavender fell into the water, the said defendant, Charles Stanley, instead of giving an alarm and immediately having a boat lowered to attempt to rescue the said Lavender, merely notified some-

one to go and call the captain, and thereafter a boat was lowered and though the said Lavender called for help and could have been rescued, if proper efforts had been made, the space of ten minutes or more elapsed before any boat was finally lowered to attempt the said rescue. That the said steamer "Lydia Thompson" was not properly and sufficiently manned and there was no lookout upon the said steamer to give an alarm in case of accident and there was no alarm given, and the death of the said Lavender was caused on account of the said negligence as above set forth and of the said defendant Puget Sound Navigation Company in not having said steamer properly manned and in allowing the said boat to be and remain in such defective and dangerous condition and to notify the said R. O. Lavender that it was dangerous for one to open the same, and in failing to make suitable and proper efforts to effect the rescue of the said Lavender or such efforts as could have been made if such steamer had been properly manned and equipped.

VI.

That the plaintiff is the widow of the said R. O. Lavender.

VII.

That the said R. O. Lavender was at the time of his death an able-bodied man of the age of fifty-six years and was a sailing master by occupation, and was ca-

pable of earning, and did earn at his usual employment, the sum of one hundred fifty (\$150.00) dollars per month, and that the said death was caused by the neglect of the above-named defendant as herein alleged and the plaintiff herein has been damaged in the sum of ten thousand (\$10,000.00) dollars thereby.

Wherefore, plaintiff prays judgment against the defendants, and each of them, for the sum of ten thousand (\$10,000.00) dollars, and for the costs and disbursements of this action.

BYERS & BYERS,
Attorneys for Plaintiff.

State of Washington,
County of King,—ss.

Mary R. Lavender, being duly sworn, says, that she is the plaintiff in the above-entitled action; that she has read the foregoing amended complaint, knows the contents thereof, and believes the same to be true.

MARY R. LAVENDER.

Subscribed and sworn to before me this 27th day of June, 1906.

ALPHEUS BYERS,
Notary Public, Residing at Seattle, Washington.

[Endorsed]: Amended Complaint. Filed in the U. S. Circuit Court, Western District of Washington. June 28, 1906. A. Reeves Ayres, Clerk. R. M. Hopkins, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation), CHARLES STANLEY and
SAMUEL BARLOW,

Defendants.

Trial.

Now on this 28th day of June, 1906, this cause coming on regularly for trial, in open court, plaintiff being represented by A. Byers, Esq., and the defendants represented by Ira Bronson, Esq., a jury being called, come and answer to their names as follows: O. B. Littell, M. R. Brewster, L. E. Casady, R. H. Denny, J. W. Godwin, Chas. W. Leeper, Allen Wilson, W. J. Wallace, Wm. Bremer, N. H. Thedinga, Oscar Sword and S. M. Archibald, twelve good and lawful men duly impaneled and sworn, the trial proceeds by the examination of witnesses on the part of the plaintiff as well as on the part of the defendants until the close thereof.

And now the hour of adjournment having arrived, by consent of parties it is ordered by the Court that

this cause be, and hereby is, continued until ten o'clock to-morrow morning, the 29th day of June, 1906; and the Court having cautioned the jury in this case they are allowed to separate until that hour.

Whereupon Court stands adjourned until to-morrow morning at ten o'clock.

Recorded in Circuit Court Journal, Vol. 1, page 83.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

(June 29th, 1906.)

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation), CHARLES STANLEY and
SAMUEL BARLO,

Defendants.

Trial (Continued).

And now the hour of ten o'clock A. M., having arrived, the plaintiff being represented by A. Byers, Esq., and the defendants represented by Ira Bronson, Esq., the jury being called all answer to their

names all being present in their box, this cause proceeds by the argument of respective counsel until the close thereof.

Whereupon the jury are duly charged by the Court and retire in charge of a sworn officer to deliberate.

And now on this same day the jury return into open court, all being present in their box, when, through their foreman, they present the following verdict: We, the jury in the above-entitled cause, find for the plaintiff, and against the defendant Puget Sound Navigation Co. of Oregon, and assess her damages at the sum of fifty-five hundred dollars (\$5,500). We further find in favor of the defendants Charles Stanley and Samuel Barlow. R. H. Denny, Foreman.

Interrogatories Propounded to Jury.

1. If the jury return a verdict in favor of the plaintiff in this cause, the jury is requested to state whether or not the defendant had reason to apprehend the death of said R. O. Lavender through any act on the part of the defendant.

Answer: No.

2. If the jury return a verdict in favor of the plaintiff, the defendant requests that the jury state the specific acts of negligence on the part of the defendant which was the proximate cause of the death of the said R. O. Lavender.

Answer: Defective port and ship not properly manned. R. H. Denny, Foreman.

Whereupon the jury are duly discharged from this cause.

Recorded in Circuit Court Journal, Vol. 1, page 84.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation),

Defendants.

Interrogatories Propounded to Jury.

1. If the jury return a verdict in favor of the plaintiff in this cause, the jury is requested to state whether or not the defendant had any reason to apprehend the death of said R. O. Lavender through any act on the part of the defendant.

Answer: No.

2. If the jury return a verdict in favor of the plaintiff, the defendant requests that the jury state the specific acts of negligence on the part of the de-

fendant which was the proximate cause of the death of the said R. O. Lavender.

Answer: Defective port and ship not properly manned.

R. H. DENNY,
Foreman.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY OF
OREGON (a Corporation), CHARLES
STANLEY and SAMUEL BARLOW.

Verdict.

We, the jury in the above-entitled cause, find for the plaintiff, and against the defendant Puget Sound Navigation Company, and assess her damages at the sum of fifty-five hundred dollars (\$5,500). We further find in favor of the defendants Charles Stanley and Samuel Barlow.

R. H. DENNY,
Foreman.

[Endorsed]: Verdict for Plaintiff. Filed June 30, 1906. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

In the United States Circuit Court for the Ninth Circuit, Western District, Washington, Northern Division.

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a Corporation) et al.,

Defendants.

Order Extending Time to File Bill of Exceptions.

Now upon this 9th day of July, 1906, upon the motion of the defendant and upon the consent of the plaintiff made in open court:

It is ordered that the defendant shall have thirty days from the date of this order, to wit, from the 9th day of July, 1906, in which to serve and file a bill of exceptions in the above-entitled cause.

Done in open court this 9th day of July, 1906.

C. H. HANFORD,

Judge.

We assent to the entry of the foregoing order.

BYERS & BYERS.

[Endorsed]: Order. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jul. 9, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a Corporation) et al.,

Defendants.

Judgment.

This cause coming on regularly for trial pursuant to assignment on June 28, 1906. A jury was duly impaneled and sworn to try said cause; witnesses on the part of the plaintiff and defendant were sworn and examined and the jury having been duly instructed by the Court retired to consider of their verdict and subsequently returned to the Court with a verdict and say: We, the jury in the above-entitled action, do find for the plaintiff and against the defendant, the Puget Sound Navigation Company of

Oregon, in the sum of fifty-five hundred (\$5,500) dollars.

Wherefore by reason of the law and premises it is hereby ordered, adjudged and decreed that the plaintiff do have and recover of and from the defendant the Puget Sound Navigation Company of Oregon the sum of fifty-five hundred (\$5500.00) dollars together with the costs and disbursements in this action together with interest on said sum from June 28th, 1906.

Done in open court this 9th day of July, 1906.

C. H. HANFORD,
Judge.

[Endorsed]: Judgment. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jul. 9, 1906. A. Reeves Ayres, Clerk, H. M. Walthew, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

MARY R. LAVENDER,
Plaintiff,

vs.

THE PUGET SOUND NAVIGATION COM-
PANY (a Corporation),
Defendant.

Motion for New Trial.

Comes now the defendant The Puget Sound Navigation Company and petitions the court and prays that the Court grant to the defendant The Puget Sound Navigation Company a new trial of the above-entitled cause for the following causes materially affecting the substantial rights of this defendant.

1. Insufficiency of the evidence to justify the verdict rendered in said cause.

2. Error in law occurring at the trial of the cause.

And further in support of this petition the defendant desires to specify the following particular errors occurring at the trial:

Error of the Court in allowing the plaintiff to answer the question propounded to her by her attorney relative to the average earnings of the alleged deceased R. O. Lavender, to which she answered, "Well, he could earn anywhere from fifteen to eighteen hundred dollars a year; that is what he would average."

Error in allowing the plaintiff to answer the following question propounded by the plaintiff's attorney; "At what price?"

(Answer) "Well, they would give him \$50.00 a month, and then a percentage—I don't know—it would amount to \$1500.00 a year or more. The year

before it did, and it would amount to more this year." Which answer the defendant moved to strike, which motion was denied by the Court and an exception allowed.

Error in allowing the plaintiff to testify as to the time of the death of R. O. Lavender, over the defendant's objection, it appearing that the plaintiff had no knowledge of said death except as told her by others, and that there is no evidence in this case of the death of the said R. O. Lavender.

Error in allowing the witness A. H. Dohl to answer the question propounded by plaintiff's attorney as follows:

"State what, if anything, you heard said with regard to getting out a boat", over the defendant's objection, upon which said witness testified to conversations between himself and other people than the officers of the boat.

Error in allowing the said witness Dohl to testify to the condition of the port on the steamer "Lydia Thompson" after the same had been placed aboard the boat, and error of the Court in refusing to strike out such testimony relating to the condition of the port after the "Lydia Thompson" had landed at Olga, upon the defendant's motion.

Error of the Court in allowing the said witness Dohl to answer the question, "Could that fastener, if there had been one there, have gotten out when the

port got out?" To which the defendant objected, and which objection was overruled and an exception allowed to the defendant, and to which the witness answered as follows: "Not unless it was rusted or practically broke because it was not there when I went down and after that I went out and called Mr. Grover's attention to that."

Error in allowing the said witness to answer the question as follows: "Was there any rope about there when you went down?" To which the defendant objected, which objection was overruled and an exception allowed, and to which the witness answered as follows: "The first time there was not because there was no port when I went down the first time."

Error in allowing the said witness to answer the following question propounded by the plaintiff's attorney: "Was there any rope connected with the fastener or where the fastening should have been?" To which the defendant objected, which objection was overruled and an exception noted, and to which the witness answered: "No, there was no rope when I went down the first time."

Error of the Court in allowing witness R. H. Hohl to answer the question propounded by plaintiff's attorney relating to his examination of the port in question after it had been replaced upon the boat. "Did you find anything—well, state those conditions." And the supplemental question "Olga; is

that it now?" To which the witness answered: "Yes, Olga, and the port was not there and I was desirous of seeing it and so after they left the boat we went down and the port was—" At which point the defendant objected, which objection was overruled and an exception noted for the defendant, to which the defendant proceeded to answer. "The port was a board and had a thing to set in and had screws on the ends to fasten—on one end of it had a fastening and on the other end it didn't. We examined this after we left Olga."

Error of the Court in allowing the said witness to answer the question. "If the port was in the condition that you then found it, what would be the result?" To which the defendant objected, which objection was overruled and an exception noted for the defendant, and which question was restated to the witness as follows: "If a man were to open those doors with the port in the condition that you then found it in, what would be the probable result?" To which the witness answered, "Leaning against the port he would go overboard with it." Upon which the said witness further testified in answer to the question, "How did Mr. Lavender get in the water, if you know. Do you know how he got in the water?" "He fell in with the port;" although this witness afterwards testified that he was asleep when the accident happened.

Error of the Court in allowing said witness upon redirect examination to answer to the question: "Now you say that you know that the man went out through that port; how do you know if you didn't see him?" To which the defendant objected, and which objection was overruled and an exception noted for the defendant. "I was told by one of the—" at which point the defendant further objected, and to which the witness further answered, "I went below later on and I expect it was the fireman—it was a man in the hole—explained it to us how he went out." Which question was repeated to the witness as follows: "You can answer the question then Mr. Hohl." "Well, I went down below and the man, I expect it was the fireman—he was in the hole—told me how he went out and that was the reason." And upon the further question being propounded, "What did he say, just give his exact words as near as you can remember." "I cannot tell you—he explained the way—I could not tell you the words"; and the further question, "Well what was the way—give it in your own words as nearly as you can." "Well, as I said, he opened the upper doors and went out; that was the explanation I received."

Error of the Court in refusing to strike the answer of the witness E. J. Grover to the question, "What did you next do after the boat had started on and given up the man?" (Answer.) "I turned to the

captain and told him that it was a cold-blooded piece of murder as I thought.”

Error of the Court in allowing the witness Grover to answer the question, “Now can you describe to the jury, Mr. Grover, what would naturally take place in a man’s opening that port or freight gangway?” To which the defendant objected, which objection was overruled and an exception noted, which the witness answered as follows: “Do you wish me to tell what I have seen them doing when they are opening the doors? I have seen them open this port on that same boat.” And the further question: “Then you may state that.” Which was also objected to and overruled, and an exception noted, and to which the witness answered as follows: “I have seen them take and push out the doors to fasten—push out the doors, and then they would lift up the port and unfasten it if it is fastened; and if it is not fastened, of course, it would give way, but where it is fastened I have seen them unfasten it and take and swing it out and bring it in endwise; that was the way I have seen them open this particular port.”

And the further error in allowing the same witness to answer the question: “If this port, after these doors are unclosed which embraced it, and a man was pulling these around—if the port was unfastened, what would be the probable result?” Which was ob-

jected to and which objection was overruled and an exception noted, and to which the witness answered: "The man and the port both would go out, because the port is set in just exactly like that (illustrating)."

And the further error of the Court in allowing the witness to proceed in volunteering the further answer over the defendant's objection and exception to the Court's ruling: "If that is the outside of the vessel, the port is inside of it. We will say this is the port here, the port is set in just like that exactly. It is across like that, so that it has to be fastened in to keep from going out. It is set in just like that, and this holds it from going any further. That could not come in and it could not get by this, and I don't know that it is quite that large; it might be a little taller there, and there is a fastener that goes right through the ship's side and a plank comes out here and the fastener is fastened by a screw on the inside that tightens up. Now on the one side the fastener was there, and on the other it was not. In order to take that port out they have to unfasten it and push it that way and swing it out and bring it in endwise. That was the way they opened it."

Further error of the Court in admitting in evidence Plaintiff's Exhibit "A," purporting to be a copy of a certificate of inspection specifying the number of crew required on the steamer "Lydia Thompson."

Further error of the Court in denying defendant's motion for a nonsuit at the close of the plaintiff's evidence.

Error of the Court in refusing to admit in evidence Defendant's Exhibit No. 1 for identification.

Error of the Court in refusing to instruct the jury to bring in a verdict for this defendant as moved for by the defendant at the close of the case.

And for particular points wherein the evidence was insufficient to sustain the verdict; the defendant claims that the evidence was insufficient in the following particulars, to wit:

1. That there was no evidence in this case that the defendant The Puget Sound Navigation Company, was the owner or operator of the "Lydia Thompson" at the time when R. O. Lavender is claimed to have met his death, or was in any way responsible therefor.

2. That there is no sufficient legal evidence that R. O. Lavender did meet his death.

3. That there is no sufficient evidence that plaintiff in this cause sustained such a relation to the said R. O. Lavender at the time he is claimed to have met his death as to entitle her to any recovery in this case.

4. That there is no evidence in this case as to how the said R. O. Lavender came to his death, in case he did die.

5. That there was no evidence in this case that the port, which the plaintiff claimed in her pleadings to be defective, was defective at the time the said R. O. Lavender is claimed to have come to his death.

6. That there was no evidence that the steamer "Lydia Thompson" was insufficiently manned at the time said R. O. Lavender is alleged to have died.

7. That there is no evidence that there was any negligence on the part of the crew of the "Lydia Thompson" in attempting to save the said R. O. Lavender.

8. That the jury, by their answer to the interrogatories propounded by the defendant, have eliminated any such negligence.

9. That the jury, by their finding in favor of the defendants Barlo and Stanley, have decided that there was no negligence on the part of the officers of said steamer "Lydia Thompson," and that any other evidence of negligence in attempting to save the said R. O. Lavender would have been that of a fellow-servant.

10. That the answer of the jury to the interrogatories and their special findings thereon are inconsistent with the general verdict against the defendant The Puget Sound Navigation Company.

IRA BRONSON and
D. B. TREFETHEN,

Attorneys for the Defendant The Puget Sound Navigation Company.

Service of a copy hereof admitted this 20 day of July, 1906.

BYERS & BYERS,
Attorneys for Pffs.

[Endorsed]: Petition for New Trial. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jul. 20, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation),

Defendant.

**Order Extending Time to File and Serve Bill of Ex-
ceptions.**

Now, upon this 24th day of July, 1906, it is ordered that the defendant, The Puget Sound Navigation Company, shall have until Monday, the first day

of October, 1906, in which to file and serve a bill of exceptions in the above-entitled cause and that the time provided in the rules shall be extended until said time.

C. H. HANFORD,

Judge.

We consent to the entry of the foregoing order.

BYERS & BYERS,

G.

[Endorsed]: Order. Filed in the U. S. Circuit Court, Western Dist. of Washington, July. 24, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

*In the Circuit Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation),

Defendant.

Order Denying Petition for New Trial.

This cause coming on to be heard this 17th day of September, 1906, upon the petition of the defendant Puget Sound Navigation Company, for a new

Notice in re Bill of Exceptions.

To Mary R. Lavender, the Plaintiff Herein, and to
Byers and Byers, her Attorneys:

Please take notice that the defendant Puget Sound Navigation Company has prepared a proposed bill of exceptions in the above-entitled cause and herewith serves the same upon you, and will deliver the original thereof to the clerk of the above-entitled court.

Dated at Seattle, Washington, this 21st day of
Sept, 1906.

IRA BRONSON,

Attorney for Defendant.

Received copy of proposed bill of exceptions and
due service hereof admitted this 22 day of Sept,
1906.

BYERS & BYERS,

Attorneys for Pffs.

[Endorsed]: Notice. Filed in the U. S. Circuit
Court, Western Dist. of Washington, Sep. 27, 1906.
A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. ———.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation),

Defendant.

**Notice of Application to Have Bill of Exceptions
Certified.**

To Mary R. Lavender, Plaintiff in the Above-en-
titled Cause, and to Byers and Byers, her At-
torneys:

You, and each of you, will please take notice that
on Monday, the 3d day of December, 1906, the de-
fendant in the above-entitled cause, by its attorneys,
Ira Bronson and D. B. Trefethen, will apply to the
above-entitled court to have certified the bill of ex-
ceptions prepared and proposed by the defendant in
the above-entitled cause.

IRA BRONSON and
D. B. TREFETHEN,
Attorneys for Defendant.

Due service of a copy hereof admitted this 28th day of November, 1906.

BYERS & BYERS,
Attorneys for Plf.

[Endorsed]: Notice of Application to have Bill of Exceptions Certified. Filed in the U. S. Circuit Court, Western Dist. of Washington, Dec. 1, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation), CHARLES STANLEY and
SAMUEL BARLOW,

Defendants.

Bill of Exceptions.

This cause coming on regularly for hearing on this 28th day of June, A. D. 1906, at the hour of 10 o'clock A. M., before the Honorable Cornelius H. Hanford, Judge sitting with a jury duly impaneled and sworn, the plaintiff appearing in person and by

her attorneys, Messrs. Byers & Byers, and the defendants appearing by their attorneys, Messrs. Bronson & Trefethen, the following proceedings are had and testimony taken, to wit:

Mr. BYERS.—If your Honor please, I desire at this time to ask leave to file an amended complaint. It is amended in what I consider unimportant particulars. In paragraph five Samuel Barlo is alleged as the pilot. We wish to substitute the name of Charles Stanley. In paragraph four, Charles Stanley is alleged as the captain. We wish to substitute the name there of Samuel Barlo. Those names were just transposed. Also in paragraph five we wish to allege that this defective port was unknown to Captain Lavender. I think it is sufficiently alleged, but I wish to change it to make it certain, and it is understood that the answer denies those allegations.

The COURT.—All right you may file it.

Mr. BRONSON.—I understand that the record may show that the answer to your complaint stands as the answer to the original.

Mr. BYERS.—Yes. We will call Captain Barlo.

Mr. BRONSON.—I think, if your Honor please, there is a word in this answer that I wish to amend, in the first paragraph of the second affirmative defense, the word "or" should be "of."

Mr. BYERS.—It may be considered as amended.

OPENING STATEMENT IN BEHALF OF
PLAINTIFF TO THE JURY.

Mr. BYERS.—Gentlemen of the jury, I will now state the case more fully than I stated it in the beginning and, coming down to the complaint, we allege first that the Puget Sound Navigation Company was a corporation, etc., and that allegation I think is admitted. We allege that the Puget Sound Navigation Company is the owner and operator of the “Lydia Thompson,” and that paragraph is admitted. We allege that Charles Stanley is the pilot and Samuel Barlo is the captain. Those were denied in the prior answer and I presume it will be necessary to prove it; they were substituted in the original complaint, that is, the pilot was alleged as the captain and the captain was alleged as the pilot. Now, coming down to the gist of the complaint, we allege that on the 3d day of November, 1904, Captain Lavender was employed by the said vessel in the capacity of watchman, that as the steamer was proceeding on its trip from Bellingham Bay, in the State of Washington, to Seattle, Washington, on or about the hour of four o’clock in the morning of that day, said Lavender was ordered by the defendant Charles Stanley to open the port on the port side of said vessel; prior to making a landing at the wharf in Orcas Island; that the port

of the said vessel was defective and dangerously constructed, and in such poor repair, and on account of that, among other things, that he fell over and was drowned. We shall prove to you that that port, or freight gangway as it might be termed; it is placed in the side of the boat where it is opened to take in the freight on the lower deck; that it had an opening divided into three pieces, one a lower piece about the height of this railing (showing), and the other probably a little higher, maybe six inches and possibly a foot—the other part of this opening were two doors that broke in the middle and opened out that way (showing) like that (showing). The port on the port side of this vessel was the one that we allude to; and this port was defective; the clasp that should hold it on the forward end of the port was gone. Those two doors opened from above, coming down and clasped over the top of this lower railing, and then this lower part, what we call the port, is set on the deck and has a couple or three little tenons that come down into a mortise, they are only about an inch deep and they go down through that mortise and those doors come in from the outside and hold the port in, and when they are opened it was released, but it should have got these clasps on either side; they are pieces of iron that run through the side of the ship, or the side of the port and turn over the port, so that when they are turned down over the port

that port is closed, and although the top doors may be released it is absolutely as solid and substantial as the rest of the vessel, but on this night in question this port was defective in the fact that it was not fastened on one side at all, and when these doors opened to allow the freight to be taken out this lower part of the port broke away and went right into the water, and Captain Lavender went into the water with it and was drowned. If it had been properly fastened, as he had the right to presume that it was, this could not have occurred. It is further alleged that the plaintiff, or the plaintiff's intestate, Captain Lavender, did not know of this defect. As a matter of fact we shall prove to you that he was employed just the morning previous to this; he made a trip to Bellingham, then he took the night watch coming back, and on that night watch, his first watch on the vessel, was the day, or the time that he was drowned. We will further prove to you that the said Lavender attempted to open said port and fell into the water and was drowned in the way I have described, and after said Lavender fell into the water, said defendant Charles Stanley, instead of giving the alarm to attempt to rescue him, merely notified some one to go and call the captain, and we shall prove to you that it was one of the passengers on board the boat that was notified to go and call the captain. That when Mr. Lavender, the watchman, was ordered to go be-

low to open this port that there was absolutely no one to give any alarm of any accident or disaster that might befall the vessel. Instead of the mate having a boat lowered in time, he merely notified some one to go and call the captain, and thereafter a boat was lowered and although the said Captain Lavender called for help, the space of ten minutes or more elapsed before any boat was finally lowered to attempt to rescue him; that the said "Lydia Thompson" was not properly manned, and there was no lookout on the steamer to give alarm, and that the said death of the said Lavender was caused on account of the said negligence on the part of the said Puget Sound Navigation Company in not having said steamer properly manned, and allowing said port to be in the dangerous condition, and failing to notify said Lavender that it was in that dangerous condition and failing to make suitable or proper efforts to effect a rescue of said Lavender, or such efforts as could have been made if such vessel had been properly manned and equipped.

We will show you that they attempted to lower this boat finally after being asked to do so by passengers, they attempted to lower the boat. That they did finally lower a boat in the space of about ten minutes. That this man was an expert swimmer, that he was swimming in this water all the time calling for help; that he floated past this boat within a very few

feet of it, within distance enough to have been reached by the men that were actually in the boat; that when they were trying to lower it that the tackle with which they lowered this boat got twisted, and that they could not get their boat taken away on that account, but they could have reached him from that boat sitting in the water, could have rescued Captain Lavender if they had so tred. We shall prove to you that at the time of Captain Lavender's death he was an able-bodied man of the age of fifty-six years and was a sailing master by occupation; he was temporarily on board this boat, and took this position just at that time because he was out of a job, and that his regular occupation he would not have been employed at it for a couple of months; and he was capable of earning, and did earn, the sum of one hundred and fifty dollars per month, and that the said death was caused by the negligence of the above-named defendant as herein alleged and the plaintiff herein has been damaged thereby in the sum of ten thousand dollars. There are further facts that we shall show you, of course, in showing these facts we will show the other facts, that the boat was improperly manned and we will show you in what way it was improperly manned; we will show you the improper way in which they tried to lower the boat when they did lower it, and we will show you that there was absolute neglect to try to rescue the man after he was once overboard, in ad-

(Testimony of Samuel Barlo.)

dition to the defects that caused him to fall overboard.

SAMUEL BARLO, produced as a witness in behalf of plaintiff, being first duly sworn, testified as follows:

Q. (Mr. BYERS.) Captain Barlo, will you give us the names of the crew upon the "Lydia Thompson" on the night that Captain Lavender was drowned?

A. Well, I can give part of them. I could not give all of them because I could not remember the names of all of them.

Q. Well, give the names of the crew and the positions they occupied and the names as far as you can.

A. Well, there is Bert Thornton, chief engineer, Mr. Granger, second engineer, Charles Stanley, the first mate, Walter Johnson, the purser, Mr. Dugall, fireman—the other fireman I don't know his name—there was Fred Blake, stevedore; Captain Lavender, night watchman; William Carroll, deck-hand; Norman Blake, deck-hand, and a fellow by the name of Shorty—I don't know his other name—lookout, and Mr. Dualla, steward, or some such a name as that and the cook—I don't know his name—the cabin boy, I don't know what his name was—the mess boy, I don't

(Testimony of Mrs. M. R. Lavender.)

know what his name was. Did I give you Norman Blake, the deck-hand?

Q. Yes.

A. That is the extent of our crew.

Mr. BYERS.—That is all.

(No cross-examination. Testimony of witness closed.)

Mrs. M. R. LAVENDER, plaintiff, produced as a witness in her own behalf, being first duly sworn, testifies as follows:

Q. (Mr. BYERS.) State your name, Mrs. Lavender.

A. Mary R. Lavender.

Q. Are you the plaintiff in this action?

A. I am.

Q. Where do you reside? A. East Seattle.

Q. You are the widow of R. O. Lavender?

A. I am.

Q. How old was Mr. Lavender at the time of his death? A. He was 56.

Q. What was his business or occupation?

A. Well, sea captain.

Q. How long had he been following that business?

A. I should say twenty-seven or thirty years.

Q. What was he capable of earning and what did he earn usually at that business?

(Testimony of Mrs. M. R. Lavender.)

A. Well, the average would be 15 to 18—

Mr. BRONSON.—I object to this unless this witness testifies of her own knowledge.

(Objection overruled. Exception noted for defendant.)

A. Well, he could earn anywhere from \$1,500 to \$1,800 a year, that is what he would average.

Q. Was he an able-bodied man? A. He was.

Q. How about his health, was he physically well?

A. His health was good, as a general thing it was good, he never had any trouble only a cold.

Q. What kind of a provider was he?

A. He was a good provider.

Q. What kind of a husband was he?

A. He was a good husband.

Mr. BRONSON.—I object to that.

(Objection overruled. Exception noted for defendant.)

Q. (Mr. BYERS.) What kind of a father was he, Mrs. Lavender, to his family?

A. He was one of the best of fathers.

Q. Was he a good swimmer?

A. He was; I don't think he could be beat for swimming.

Q. Do you know how he came to go on this boat on that night?

(Testimony of Mrs. M. R. Lavender.)

A. Well, he was out of work at the time, he was engaged for the coming season, but he was out of work at the time, but he took that position.

Q. Who was he engaged with?

A. With Dr. Jensen—

Mr. BRONSON.—I object to this as irrelevant, immaterial and incompetent.

(Objection overruled. Exception noted for defendant.)

Q. (Mr. BYERS.) Who was he engaged with?

A. Dr. Jensen.

Q. At what business?

A. Going into the fishing business, to go north.

Q. At what price?

A. Well, they would give him \$50 a month and then a percentage—I don't know—it would amount to \$1500 a year or more. The year before it would, and it would amount to more this next year.

Mr. BRONSON.—I move to strike out the latter part as to what it might amount to over and above \$50, as a speculation.

The COURT.—The motion to strike is denied.

(Exception noted for defendant.)

Q. (By Mr. BYERS.) How long had he been employed upon this vessel prior to his death?

(Testimony of Mrs. M. R. Lavender.)

A. He went on board the "Lydia Thompson" you refer to. He went on board the first day of November, and he was drowned on the third.

Q. He went on board the 1st—now what trip was this relation to his death, was this his first or second trip? A. It was his first trip.

Q. When was his death, do you know, what time of the year or month?

Mr. BRONSON.—I object to that for the reason that she has not testified that she knows as to his death.

(Objection overruled. Exception noted for defendant.)

A. It was November 3d, 1904.

Q. What was the capacity in which he was employed? A. He was watchman.

Cross-examination.

Q. (Mr. BRONSON.) You do not know anything about his death, Mrs. Lavender, except what you have been told by others, do you?

A. I don't quite understand you.

Q. I say, you do not know anything about Mr. Lavender's death except what you have been told by others? A. I was not there to see it.

Q. I will ask you to examine this paper which I have marked "Identification No. 1," and I will ask

(Testimony of A. H. Dahl.)

you whether that is Captain Lavender's writing (showing)? A. Well, will I read all of it?

Q. You may read it, I want to know whether it is his writing. A. Yes, that is his writing.

(Testimony of witness closed.)

A. H. DAHL, produced as a witness in behalf of plaintiff, being first duly sworn, testified as follows:

Q. (Mr. BYERS.) Where do you reside?

A. Bellingham.

Q. What is your business?

A. Merchant.

Q. How long have you lived in Bellingham?

A. Almost four years.

Q. Do you remember the night of November 3d, 1904? A. Yes, sir, I do.

Q. Where were you on that night?

A. I was on the steamer "Lydia Thompson" from Bellingham to East Sound.

Q. From Bellingham to East Sound?

A. Yes, sir.

Q. Did you meet a certain individual by the name of Lavender? A. I did.

Q. What position was he occupying when you met him?

A. I went down to the boat about one o'clock on the second day, that is one o'clock in the morn-

(Testimony of A. H. Dahl.)

ing, and I went into the gents' cabin and sat down and smoked a cigar and there was nobody around on deck and I didn't see anybody, and this gentleman was sitting in there and I got into conversation with him and he told me that this was his first trip on the boat.

Mr. BRONSON.—I object to what Captain Lavender told him.

The COURT.—Leave out the conversation.

Q. (Mr. BYERS.) Now, did you notice the position or what Mr. Lavender was doing on the vessel?

A. Well, the only thing I noticed him doing at Bellingham was carrying the mail sacks aboard.

Q. I am referring now to the time—you got on the boat to make the trip? A. Yes.

Q. Now, at night or during the trip, what was Mr. Lavender doing?

A. Well, after we—after the boat turned around to go out of port Mr. Lavender was at the wheel.

Q. He took the wheel? A. Yes.

Q. What portion of the boat was that in?

A. It was in the forward part of the boat, and it was kind of stormy that night and I didn't like to take a stateroom and go to bed because it was stormy.

(Testimony of A. H. Dahl.)

Q. Never mind the conversation.

A. I asked the mate if I could stay in the pilot-house with him and he said it was all right, and I sat down on the lounge.

Q. And you went with him for what distance?

A. Almost to Olga, not quite.

Q. Was there any one of the members of the crew besides Mr. Lavender on the pilot's deck, during the time you were going to Olga?

A. The mate was in there.

Q. The mate was in there too?

A. Yes.

Q. Who was the mate?

A. Well, I don't know the gentleman's name, but he directed Mr. Lavender how to steer the boat.

Q. Do you know now what his name was?

A. No, I do not.

Q. Well, now, when you got almost to Olga, what happened?

A. When I got almost to Olga I was standing to the left-hand side in the pilot-house and looking out the window and I seen a light come out from below. It was dark—it was early in the morning, and in an instant that light disappeared again and I heard a kind of jamming or slamming of some doors, and the next thing was the whistle in the tube in the

(Testimony of A. H. Dahl.)

mate's house—in the pilot-house—and the next instant the mate asked us to call the captain.

Q. Asked us—who is “us”?

A. Mr. Grover and me. “Call the captain”—them was his words, “For God's sake, call the captain!” that was his words, and it was only me and Mr. Grover in there besides the mate, but he could not drop the wheel.

Q. Was there anyone else on deck besides you and Mr. Grover at the time?

A. Not that I ever seen since before we left.

Q. What, if anything, had transpired between the mate and Mr. Lavender before this happened?

A. Well, Mr. Lavender was at the wheel part of the time and then this other gentleman, that I supposed was the mate, relieved him, and Mr. Lavender went out; he was out half an hour or such matter as that, and then he came back and then Mr. Lavender went to the wheel and the mate went out and he was out from fifteen minutes to twenty minutes or such a time as that, and then he came back, but he directed the course of the vessel, so many points that way and the other way.

Q. Immediately prior to Mr. Lavender going below, what happened between him and the mate, if anything?

A. Nothing that I know of.

(Testimony of A. H. Dahl.)

Q. Did the mate tell Mr. Lavender to go below?

A. Before going into Olga he told him to go below and open the ports, and clear the ports to unload some goods at Olga.

Q. How long was it after Mr. Lavender was told to go below and open the port that you saw this flash of light on the water and the doors slam?

A. In the course of about three minutes.

Q. How closely connected in time was the opening of the doors and the whistle up the tube into the pilot-house?

A. I should say instantly, not less than a minute—that is, of the slamming of the doors.

Q. The slamming of the doors?

A. Yes, sir.

Q. Then after the mate had told you, or you and Mr. Grover, to call the captain, then what happened next?

A. Well, I asked him where the captain was, and he said "He is in the room back of here," and I tried to find some way to turn on the electric lights, but I could not find any because I did not know where he turned it on, but I finally found the door and I got out on deck and then rapped on this door, and I rapped at the door and the captain responded at once and came out in his night clothes and he asked the

(Testimony of A. H. Dahl.)

mate what was the matter, and he said "The watchman is overboard."

Q. Was that the first you knew that the watchman was overboard? A. Yes, sir.

Q. Then what happened?

A. Well, what happened in the mate house, I don't know; I grabbed the line that was there and cut it loose and ran aft because I could hear the man in the water hollering "Help." He hollered and I ran aft as fast as I could, but the boat was going too fast ahead so that he got too far behind and I could not see him, but I could hear him; and in the course of a few minutes the boat reversed and went backwards.

Q. Went backward? A. Yes.

Q. Did anyone order a boat to be gotten out to rescue him?

A. Yes, I heard them holler to drop a boat.

Q. Who was it asked for a boat to be gotten out?

A. Well, I don't know, I presume it was the captain—he hollered.

Q. Did you hear anyone ask the captain to get a boat out?

A. Yes, Mr. Grover asked the captain to get a boat out, and he says—

Mr. BRONSON.—I object to what he heard other people saying.

(Testimony of A. H. Dahl.)

The COURT.—The objection is sustained. This witness will tell what he knows if you let him. The objection to the question is sustained as leading.

Q. (Mr. BYERS.) State what, if anything, you heard said, with regard to getting a boat out.

Mr. BRONSON.—We object to what the bystanders or passengers said as irrelevant, immaterial and incompetent.

The COURT.—Everything that was said and done at that time is part of the *res gestae* and it is material. I will overrule the objection.

(Exception noted for defendant.)

A. Well, it was only Mr. Grover and myself and the mate and the captain that were there. That was all that was on deck that I seen. And Mr. Grover hollered to the captain and told him to get a board out as quick as possible, and then that minute I ran back with the rope, as I said before, to try and see if I could see him to throw the rope to him. I did not see any of the preservers that Grover had—Grover had a life preserver in his hand afterwards I noticed, but I didn't see any when I cut the line. It was quite a long line but I cut it loose—it was a light line—I suppose it was the line for the forward rope they throw ashore. There was a big rope attached to the line but I got my knife out and cut

(Testimony of A. H. Dahl.)

it loose and ran around with it and I got around there and I could hear him—this was going back to the stern of the boat I went, and then I could hear him out to the left—the boat was drifting a little, the wind was kind of drifting the boat to the right and the boat reversed and went by, and then it went by him so that I could hear him in this direction (illustrating) right across the bow in the front, and then the boat at that time, the boat was down in the water.

Q. You refer now to the little boat?

A. Yes, to the little boat, it was taken down, and the minute the boat got down they tried to cut it loose and start it away from the boat, but it was not loose, it was fast in the forward end, and the minute they were trying to loosen that boat I seen the body of the man just outside of the boat.

Q. How far was it away from the small boat?

A. It was right up to the stern and I hollered to them, I said, "Grab him, quick," because, of course, the boat was drifting, it was after the boat had commenced to go ahead again and it just met the body—it seemed that the body was moving, but it would naturally be the boat that was moving, but it was drifting by and coming towards the stern of the boat again, and it was right close up to the stern of the little boat and I hollered down as hard as I could

(Testimony of A. H. Dahl.)

to grab him because I saw him, and Mr. Grover seen him too, and I throwed the line and I just throwed the line right over him, but he was in this shape (showing), with both hands like that (showing), and the light from the upper cabin shone down on him, and Mr. Grover, he threw one of those life preservers, a round one, and that lit within a couple of feet of him, but he didn't stir, he just was in this position, with his face towards the boat and his hands up this way. (Showing.)

Q. Now, state how long it was, if you know, from the time that alarm was given until the small boat was finally lowered?

A. Well, it is very hard for me to say; it seemed a very long time, I should judge at least ten minutes, because the boat went forward a little before it got stopped and it went astern quite a ways and then it started to go ahead again before they got the little boat down.

Q. What kind of weather were they having at that time?

A. Well, coming up between the islands there it was quite stormy to some extent, but up there it is calm—either the wind went down or it was in behind the islands—the wind was not severe because they took the boat out 30 or 40 feet from the ship and

(Testimony of A. H. Dahl.)

it didn't seem to toss the little boat much, and the waves were not large.

Q. It was in a sheltered part?

A. It seemed to be, at least the waves were not large there.

Q. Now, did you see the port in question?

A. Well, the first I seen of the port in question was the second time the little boat left the "Thompson" in search of Mr. Lavender; it went out first, I should judge, about 30 or 40 feet from the boat and came back and then it went out again probably between 40 or 50 or 60 feet, not very far, because I could see distinctly, and the captain hollered something about letting the body go somewhere, and pick up that port and come in.

Q. Tell what he said the second time.

A. Well, he said, "Let the fellow go to hell and pick up the port and come in," them was the words he said.

Q. Now, did you examine this port, this port opening, or whatever it may be called in technical language?

A. Well, I thought it was a funny thing and I went down after they had landed at Olga and started again, and then I went down.

Q. Describe to the jury this port in question so that they will understand it, as near as you can.

(Testimony of A. H. Dahl.)

A. The port is about as high as this railing, perhaps, and a trifle higher, and it has got a kind of a piece to match it like that, and the port doors comes down on that and matches down on that and this port has a kind of a slot in both ends and there is an iron with a hole in it that went through the body of the boat, and this thing would slide down and you could slip it out, and when you push this up and tighten up the hand-screw on there it would fix it so that it would not slip out, and in the forward end of that there was not such a hand-screw, but when I went down there there was a big rope around it—it was lashed in one end, and in the other end was that iron.

Q. (Mr. BRONSON.) Are you testifying to what you saw after the port was put back in the boat?

A. Yes.

Mr. BRONSON.—Then I move to strike out all his testimony relative to how this port was fastened after it was put back in the boat, after this had occurred.

The COURT.—The motion to strike out is denied.
(Exception noted for defendant.)

Q. (Mr. BYERS.) Now, describe to the jury, Mr. Dahl, the upper part of this port.

(Testimony of A. H. Dahl.)

A. The upper part?

Q. The upper part of the port or freight gangway, and the opening for the gangway.

A. That was two doors, one attached on that side and the other here and they come together in the center of the port, and they swing open, one to each side and, of course, when they were swung open and hooked, this would leave this port open and you could take the port out, and that is where they took the port out.

Q. Do you know whether or not there was any fastener to that front end of the port at the time this accident happened?

A. There was none there when I went down there to look.

Q. How soon after that, did you first go down to look?

A. When they were turned round to go out from Olga.

Q. How long was that after the accident?

A. About fifteen minutes or twenty minutes.

Q. Could that fastener, if there had been one there, have gotten out when the port got out?

Mr. BRONSON.—I object to that as calling for a conclusion from the witness.

The COURT.—He can state the facts. I will overrule the objection.

(Testimony of A. H. Dahl.)

(Exception noted for defendants.)

A. Not unless it was rusted or practically broke, because it was not there when I went down, and after that I went out and I called Mr. Grover's attention to that.

Mr. BRONSON.—I object to his testifying to what he called Mr. Grover's attention to.

(Objection sustained.)

Q. Mr. BYERS.) Now, Mr. Dahl, state to the jury what, if anything, there was to retain this port, or the lower part of the port from falling out after the top doors were open?

A. Nothing, unless the rope was on it.

Q. Do you know whether or not a rope was on there?

A. No, I do not. It could not fall out if the rope was on there.

Q. Was there any rope about there when you went down?

Mr. BRONSON.—I make the same objection.

(Objection overruled. Exception noted for defendants.)

A. The first time there was not, because there was no port when I went down the first time.

(Testimony of A. H. Dahl.)

Q. (Mr. BYERS.) Was there any rope connected with the fastening or where the fastening should have been?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent.

(Objection overruled. Exception noted for defendants.)

A. No, there was no rope when I went down the first time.

Cross-examination.

Q. (Mr. BRONSON.) You went down on board this boat about one o'clock?

A. Yes.

Q. And where did you first go?

A. I went on board and went into the cabin where the smokestack comes through, I supposed it was the men's cabin and I sat down there and smoked a cigar.

Q. And then where did you go?

A. Where did I go—I stayed there until the boat started out of the port.

Q. When was that?

A. Well, it was a little after two o'clock, she was supposed to go at two, but she didn't go until a few minutes after.

Q. Where did you go then?

(Testimony of A. H. Dahl.)

A. I went outside and stayed outside until we passed Fairhaven.

Q. Whereabouts outside?

A. Well, I went out on the—I don't know what you call the gangways around the boat—I am not very much familiar with the boat, but it was outside the cabin, and I stayed there in the lee of the wind until they passed Fairhaven.

Q. Outside on the main deck or the upper deck?

A. Well, it is the deck that both the cabins are on, both the ladies' and the men's cabins, that is what I call the main deck, it was not up on the high deck.

Q. Did you go aboard on the gangplank?

A. Yes.

Q. What deck was the gangplank leading to?

A. It was leading on the deck that I stood on all the time, I presume it was the main deck, it was on the deck that the mate's cabin was on.

Q. When did I understand you to say that you went out of the cabin? A. When what?

Q. Out of the cabin?

A. Well, a few minutes after two, as soon as they started to turn around to leave the wharf at North Bellingham.

Q. You where in the cabin until after they left Bellingham?

A. Until they left North Bellingham; yes, sir.

(Testimony of A. H. Dahl.)

Q. Where did you go after you went outside?

A. I went out on the stern end, right on the back end of the deck and stayed there until they passed Fairhaven.

Q. And then what?

A. And then I went forward, I and Mr. Grover both went forward and asked whether we could stay in the cabin, because it was a little stormy down there and we did not like to go to bed, it was so late anyway we did not care to take a room and go to bed, and he said we could stay there in the pilot-house.

Q. That was immediately after leaving Bellingham?

A. That was immediately after leaving Fairhaven.

Q. And you stayed there until you got about to Olga?

A. Yes.

Q. You say that you saw the body floating in the water?

A. Yes.

Q. With the arms over the head?

A. Yes.

Q. Was there anything said by him?

A. No, sir, not at that time, but before that he was hollering "Hurry up, boys, hurry up, boys, I can't stand this long"; he was not far away and I could hear the words distinctly.

Q. What light was it you saw him by?

(Testimony of A. H. Dahl.)

A. From the cabin.

Q. It was a dark night, was it not?

A. Quite dark, yes, sir.

Q. And there was a big mountain that throws a shadow all down that bay?

A. It was too dark to see any mountains throwing any shadows.

Q. Could you see the water without the aid of artificial light? A. Yes.

Q. Could you see objects in the water without the light?

A. No, sir, not any distance to speak of—you could see the water probably.

Redirect Examination.

Q. (Mr. BYERS.) As I understood you to state the mate ordered Mr. Lavender to go below, and you saw the light on the water then?

A. I saw the lights on the water, not in the water—they were out over the water.

Q. Now, do you know what that light came from?

A. Well, I could not say positively, but I know—

Mr. BRONSON.—Then we object to his guessing.

Q. (Mr. BYERS.) Did you afterwards satisfy yourself of what that light came from at that time?

A. Yes, sir.

(Testimony of A. H. Dahl.)

Q. Now, what did it come from?

A. It came from the opening of these doors.

Q. Now, in conjunction with the opening of these doors and the light which you saw there, when was this whistle that came up to the mate?

A. Almost instantly, inside of a minute or something—almost instantly.

Recross-examination.

Q. (Mr. BRONSON.) Where did you say you were when you saw this light?

A. I was in the pilot-house.

Q. You were in the pilot-house?

A. Yes, sir.

Q. What were you doing in there, sitting down?

A. No, sir, I was standing up looking out the window to see if I could see Olga, because I supposed—the whistle had blown and I supposed that we were going into Olga.

(Testimony of witness closed.)

R. H. HOHL, produced as a witness in behalf of plaintiff, being first duly sworn, testifies as follows:

Q. (Mr. BYERS.) State your name.

A. R. H. Hohl.

Q. Where do you reside? A. Bellingham.

Q. What is your business?

(Testimony of R. H. Hohl.)

A. Merchant, at present.

Q. Where were you on the night of this accident in question?

A. I was on board the "Lydia Thompson."

Q. Where was the "Lydia Thompson"—where was she going to at that time?

A. I guess she was bound for Seattle; I got on at Bellingham.

Q. You got on at Bellingham?

A. I got on at Bellingham.

Q. Did you—were you a witness to any accident that night? A. Yes; yes, sir.

Q. Now, tell what you saw at the time.

A. Why, I was asleep on the right-hand side of the boat, I had a berth, and the windows were open and I was awakened by a commotion and noise and the boat stopped and I got up, and I heard somebody say, "Man overboard," and I heard some hollering and I got up and went up on deck, and just as I got up on deck a couple of men rushed down to the end and by that time I knew there was a man overboard—I could hear him hollering—I could hear the men speaking loud, and Mr. Grover got a life preserver ready and some one had a line to get him in, and by this time I was there hollering to him and cheering him up, and he also was answering back and told us to hurry up, and I had been out a

(Testimony of R. H. Hohl.)

few moments and in a little while on deck when they got the boat; started the boat down—a couple of men up on the top monkeying around the boat and they got the boat in the water and I think they got the—in fact I know they got the back block or hook off, but the front block it was fastened and it would not come out for some reason, and by that time the man was getting pretty weak. I stood there talking to him and—not really talking to him, I was hollering to him, and he began to fill up with water—he just filled on the top, because the last words he hollered, he said, “My God, boys,” he said, “hurry, I can’t last much longer,” and he was gurgling then, and he floated by. He floated, I should judge, within a couple of feet of the stern of the small boat and I was directly above him and looking right down.

Q. Were there men in the small boat at that time? A. Yes, two.

Q. What was said, or was anything said to those men?

A. Yes, we hollered and pointed and showed them and hollered and tried to have them make an effort to get him.

Q. Was there any effort made to get him?

A. No.

Q. Did you examine this port, on the port side of that boat that night?

(Testimony of R. H. Hohl.)

A. Yes, I was down below.

Q. Who was in company with you when you examined it?

A. The gentleman who was here on the witness-stand, and Mr. Grover, and myself.

Q. Did you find anything—well, state its condition:

A. Well, I went down just before they ran into port.

Q. Olga, is that it now?

A. Yes, Olga, and the port was not there, and I was desirous of seeing it and so after they left port we went down and the port was—

Mr. BRONSON.—We object to this witness testifying to what he saw or what conditions existed there after the boat left Olga, as irrelevant, immaterial and incompetent.

(Objection overruled. Exception noted for defendant.)

Q. (Mr. BYERS.) Go ahead and state its condition—the condition of the port.

A. The port was a port and had a thing to set in and had screws on the ends to fasten—on one end it had a fastening, and the other end it didn't. We examined this after we left Olga.

(Testimony of R. H. Hohl.)

Q. Now, that fastening which you allude to, was it in the port or was it in the vessel?

A. It was in the vessel.

Q. Now, did you say there was a fastening in one end?

A. Yes.

Q. And no fastening in the other?

A. No, sir.

Q. Were there top doors to that port?

A. Yes.

Q. Describe those doors to the jury.

A. Well, there is two doors in the center opening—they come directly on the top of the port; they open like that (illustrating), and they swing right on the top of the port releasing the entrance.

Q. How would a man open those top doors?

Mr. BRONSON.—I object to that as irrelevant, immaterial, incompetent, and this witness is not shown to be competent to express an opinion on a question of seamanship and this is manifestly such.

(Objected overruled. No answer.)

Whereupon the Court takes a recess until 2 P. M.

Afternoon Session, two o'clock.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

(Testimony of R. H. Hohl.)

Same witness on the stand for further

Direct Examination.

(Question repeated to the witness as follows:)

Q. (Mr. BYERS.) How would a man open those top doors?

A. Well, the only way to open them would be to lean against the port and shove the two top doors with your hands—two separate doors—they close on the top of the port.

Q. If the port was in the condition that you then found it, what would be the result?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent.

The COURT.—He can tell what he thinks would be the probable result.

(Exception noted for defendant.)

Q. (Mr. BYERS.) If a man were to open those doors with the port in the condition that you then found it in what would be the probable result?

A. Leaning against the port he would go overboard with it.

Q. How did Mr. Lavender get in the water, if you know—do you know how he got in the water?

A. Yes.

Q. How? A. He fell in with the port.

(Testimony of R. H. Hohl.)

Q. Referring to the port now; on which side of the vessel was this port which you have been talking about it? A. It would be on the left.

Q. The left-hand side? A. Yes, sir.

Q. As the vessel is going?

A. Is going forward.

Q. In what condition—state if you examined the general condition of that port with regard to—well, the general condition of the port.

A. Well, the port was old and worn.

Q. Where was it worn?

A. Well, around the—where the fastener was—around the corners and edges over what you call where the fasteners hold.

Cross-examination.

Q. (Mr. BRONSON.) Where did you say you were when you first heard of the accident?

A. In the stateroom.

Q. What were you doing? A. Sleeping.

Q. You were sleeping—what did you do?

A. I got up and looked out the window and there was a commotion out there, and I found out there was a man overboard, from the hollering and talking.

Q. Did you dress yourself?

A. No, sir, I half dressed myself.

(Testimony of R. H. Hohl.)

Q. You half dressed yourself?

A. I half dressed myself.

Q. For instance, what did you do?

A. I put my shoes on, and put my trousers on.

Q. You put your shoes on? A. Yes, sir.

Q. Did you put your stockings on?

A. I think I had my stockings on, I am not positive, I had my underclothes on.

Q. And you put your shoes and trousers on?

A. Yes, sir, I didn't have no outside shirt on.

Q. Where was your room?

A. My room was about the—about the third room, I should judge from the bow, on the right-hand side.

Q. Where is this room of yours relative to the pilot-house?

A. It is back of the pilot-house.

Q. How far back of the pilot-house?

A. I am sure I don't know; I should judge half-ways down.

Q. Halfway the length of the ship?

A. Halfway the length of the cabin; I should judge it was that far.

Q. There are two ports, one on either side of the vessel, are there not? A. Yes, sir.

Q. Both alike in general appearance and dimensions?

(Testimony of R. H. Hohl.)

A. Yes, sir, they are used for the same purpose.

Q. Where are they relative to the pilot-house?

A. Well, now, I don't know. I could not tell you, I don't know where that is, I should judge about the middle of the ship—a little forward I think, about the middle.

Q. About the middle of the ship, you think?

A. I think so, yes, sir.

Q. What was it that first awakened you?

A. Well, the commotion, noise.

Q. What noise?

A. That noise of the men hollering to give him help and such as that.

Q. Noise of the men hollering to give him help?

A. Noise of the men hollering to give him help, and I also heard him holler.

Q. Was that what wakened you, hearing him hollering?

A. No, I don't think it was—the noise that he made, and the other noise—the commotion in general was what waked me.

Q. Did you see him fall overboard?

A. No, sir.

Q. Did you see the man in the water until you saw his body along there drifting by the stern of the vessel?

A. No, I saw the man once.

Q. That was all you saw?

(Testimony of R. H. Hohl.)

A. Yes, I saw him as he drifted by, and I didn't see him before that in the water—you could hear him, but I could not see him, it was too dark.

Q. When you went out of your room which way did you go? A. Directly out.

Q. How?

A. Directly out, right out the door.

Q. Then which way?

A. I didn't have to go anywheres—I stood right there a few moments—there was three or four fellows passing me there—those gentlemen that were on the ship.

Q. You stood right in front of your room?

A. Yes, sir.

Q. Did you say that you heard the man in the water crying out? A. Yes, sir.

Q. Which way was he from the vessel when you heard him crying out?

A. Directly from me, right out.

Q. Right directly off on the right-hand side?

A. On the right-hand side.

Q. How far did he appear to be?

A. Well, he didn't appear to be very far.

Q. Could you see him? A. I saw him once.

Q. You did not see him again?

A. When he was hollering?

Q. Yes. A. No, I did not.

(Testimony of R. H. Hohl.)

Q. How far could you see?

A. That depends on whether some light came out of the windows or such as that, you might see farther than others—I don't really know how far.

Q. How far do you think?

A. When I saw the man?

Q. I did not ask you that.

A. That is all I could see, I could not see the water, it was all the same color—I saw the object—the man.

Q. How far could you see when you first stepped out of your room?

A. How far out in the water? Why I didn't take particular notice—I don't know how far I could see.

Q. Well, what is your best judgment?

A. The only judgment I have is the object I saw, how far that would be.

Q. You haven't any idea how far you could see at the time you stepped out of the room?

A. You could not see a great ways coming out of the light room, if you turned the light on, coming out.

Q. Were you confused any from being asleep and waking up? A. No, sir.

Q. Perfectly clear-headed? A. Yes, sir.

Q. Have you had any experience at sea as a sailor? A. Not as a sailor, no.

(Testimony of R. H. Hohl.)

Q. Have you ever been employed on board a ship in any capacity? A. No, sir.

Q. You said you heard the man in the water holler as he drifted by the stern of the vessel?

A. Yes, sir.

Redirect Examination.

Q. (The COURT.) Did you ever see anybody open those ports—did you ever see anybody push the port open?

A. On that particular boat, no—I have seen them opened.

Q. That particular port—did you ever see it opened?

A. No, I have seen it open—I never saw it opened at the time.

Q. I mean the operation of opening it.

A. No, sir.

Q. Did you ever see it?

A. No, I don't believe I ever did.

Q. Well, if you had to open the port, the top port, and did not want to fall overboard, how would you go at it to get it open?

A. If I didn't want to fall overboard?

Q. If you had to get it open and did not want to fall in the water, how would you do it?

A. Well, if the bottom was stationary I would just open it up.

(Testimony of R. H. Hohl.)

Q. Don't put any "if" in it—you say you saw it and examined it and you told how it was done—is there not any other way to get it open except to lunge out through it and fall in the water?

A. I don't think there is any other way to open it only to shove it open—the two top doors.

Q. (Mr. BYERS.) Mr. Hohl, you spoke of the man being on the right-hand side; what had happened, if anything, before he came on the right-hand side of the vessel—what had the vessel been doing, if anything?

A. Well, as I got out the vessel was backing, when I got out the vessel was backing.

Q. Now, it had backed how far?

A. Well, I could not say as to that, how far she backed, I know she was backing.

Q. Now, you said that you knew that the man went out through that port—how do you know it if you did not see him?

Mr. BRONSON.—I object to that as not proper re-direct examination.

(Objection overruled. Exception noted for defendant.)

A. I was told by one of the—

(Testimony of R. H. Hohl.)

Mr. BRONSON.—We object to his testifying what he was told and we renew our objection as not proper redirect examination.

The COURT.—I will instruct the jury to pay no attention to any testimony the witness gives when it turns out he is not testifying what he knows, but repeating what he has been told. The witness who told him is the one to come here and tell the jury if that is the fact. He swore he knew how the man went into the water and now he says he only knows because it was told him.

Mr. BYERS.—I propose to show that it was part of the transaction, that he was told in this transaction, and to fix it in that way. I will ask this question.

Q. Who told you, and when?

A. I went below later on, and I expect it was the fireman—it was the man in the hold explained it to us how he went out.

Mr. BRONSON.—Do I understand your Honor is allowing him to answer that question, so that I will have my objection in the record?

The COURT.—Yes, I think you had better find out all about it now—I will still instruct the jury though, how to treat such evidence.

(Testimony of R. H. Hohl.)

Q. (Mr. BYERS.) You can answer the question then, Mr. Hohl.

A. Well, I went down below and the man, I expect it was the fireman, he was in the hold, told me how he went out, and that was the reason.

Q. What did he say—just give his words exactly as near as you can remember.

A. I cannot tell you—he explained the way—I could not tell you the words.

Q. Well, what was the way—give it in your own words as nearly as you can.

A. Well, as I said, he opened the upper doors and went out; that was the explanation I received.

Q. When was that with reference to this accident?

A. That was, well, some little time afterwards.

Q. Before you got to Olga or afterwards?

A. I think it was before.

Q. Before you got to Olga? A. Yes.

Q. How far were you from Olga when this accident occurred, approximately?

A. I don't know, it was not very long before we got to Olga.

Q. Was the fireman in such a position that he might have seen this witness—or this deceased, go out?

(Objected to and objection sustained.)

(Testimony of R. H. Hohl.)

Recross-examination.

Q. (Mr. BRONSON.) You say that when you got up, the vessel was backing?

A. Yes.

Q. You mean that she had sternway on her?

A. Yes, she was going.

Q. She was moving backwards through the water?

A. Yes, sir, that is when I got out on the deck so that I could see.

(Testimony of witness closed.)

E. J. GROVER, produced as a witness in behalf of plaintiff, being first duly sworn, testifies as follows:

Q. (Mr. BYERS.) State your name.

A. E. J. Grover.

Q. Where do you reside?

A. Bellingham.

Q. Where were you on the evening or morning of the 3d day of November, 1904?

A. I took the "Lydia Thompson" on the north side of Bellingham to go to East Sound.

Q. Did you go to bed? A. No, sir.

Q. What did you do when you first went on board?

(Testimony of E. J. Grover.)

A. As I remember it; I think I met Mr. Dahl as I went aboard the boat—I don't remember whether I met him in the cabin or where I met him, but I know that I met him and we were in there talking around the ship somewheres.

Q. What did you then next do?

A. When the boat left the north side Mr. Dahl and I went outside and we were smoking and talking, and after we left the Fairhaven side or South Bellingham as it is now called, we went to the pilot-house and asked if we—

Q. Go ahead.

A. After we left the south side, or Fairhaven, we went into the pilot-house and they gave us permission to stand in there and watch, as we could see out, it was storming something so that it was pleasant—we stayed in there in the pilot-house until this accident occurred; until this man went overboard.

Q. Now, when the accident occurred, where were you?

A. We were in the pilot-house.

Q. What happened?

A. Mr. Dahl—we had been standing there talking with the mate for awhile and then Mr. Lavender came in and the mate gave Mr. Lavender the wheel and gave him some directions there—we were listening to it, but I could not tell you what they were

(Testimony of E. J. Grover.)

because I don't understand the signals, but he was giving him the courses, as I understood it, and then he left and went somewhere, I don't know just where. Just before we were to land at Olga, just a short time, the mate returned and ordered Mr. Lavender to go below and prepare to land at Olga. Just a very short time after that, I could not state just within a minute or two, but we were standing there watching, looking out the left side, and there was a flash of light went out and we heard a racket and just then some one blew up through the whistle tube, or whistled up, and the mate hollered to us to get the captain—I don't remember just the exact language, but he was somewhat excited, and we tried to get out of the door—Mr. Dahl, I think, got out of the door first, and I think the mate had to go and open the door—it was stuck or something—at any rate, Mr. Dahl went out and rapped on the door and I rapped on the window and the captain came out and opened the door and wanted to know what was the trouble and we told him the mate wanted him. He asked what was the trouble and the mate said, "The watchman is overboard," and with that he came out and went into the pilot-house.

Q. What did the captain do?

A. Well, the captain then took the wheel himself and they stood there for a minute, I don't re-

(Testimony of E. J. Grover.)

member just when the boat was reversed, I could not tell just exactly because I don't know how they gave the signals, but I know it was reversed some time and I says to the captain, I says, "Why don't you get—"

Mr. BRONSON.—I object to that.

The COURT.—I will overrule the objection, he can tell what was said at the time.

A. (Continuing.) I says to him, I says, "Better get a boat out right away," and I says, "Get me a life preserver," and he said, "I haven't got a knife," I said, "I have got a knife" and I got out my knife and I think either the mate or the captain, I could not remember which, cut me away one of those round life tubes or life preservers, and I grabbed that and Mr. Dahl grabbed a line and we rushed out on the left-hand side where he had gone overboard and we hollered and we could not hear anything and we ran away to the back of the vessel. The vessel up to that time I don't think had reversed yet, because we ran away around the rear of the vessel before we could hear him and then he was away back. Well, the boat seemed, as near as I could tell, when it backed up, it backed up this way (illustrating) and left the man on the right-hand side of the ship—facing the forward part—and then I commenced to

(Testimony of E. J. Grover.)

holler to him, and he answered me, and the mate and one young man I think, went up and got into the boat and lowered the small boat down at the side of the vessel, and we kept hollering to the man and cheering him up as much as we could, and they got the boat down, but there was something the matter with the rigging or the fastening—they could not get the boat away from the big boat; they had loosened one end of it and they could not loosen the other, and while the mate was working at that we saw the man come along. Either the ship was moving or he was—anyway he came and almost struck the little boat, and as he did that we hollered to the men down below to grab him, and as we did that I threw my life preserver to him, but the man apparently had just—he had just drowned. We really heard him drown right on the water. The last thing he hollered back to us he said he could not last much longer, and we heard a gurgling sound and almost immediately he came alongside of the boat, and as he did that we hollered to the men to grab him, and then I threw my life preserver, and my life preserver did not hit him. It hit—I could not say exactly, within a couple of feet of him, but Mr. Dahl's line went right across him, but he was too far gone then, and the men could not get the boat away from the big boat, and as soon as they did they started

(Testimony of E. J. Grover.)

after him. They were, I should judge—I could not tell exactly how far they were. They were a little ways and then they came back again and they were ordered out again, or else they went at least, and they went a little ways farther and they went out beyond where the port was and the captain hollered and told them to—

Q. The port was in the water at that time?

A. The port was in the water at that time. The port followed the man, right alongside the vessel, and immediately after the man went along the port came along after him there—you could see the whole business—and he ordered the men to pick up the port and bring in the port.

Q. State who if anyone was on deck when the watchman was ordered below.

A. There was not anybody on deck at all—there was not anyone out in front or any place that we could see, at least. There was the mate and myself and Mr. Dahl in the pilot-house.

Q. Was there a lookout on the deck at that time?

A. No, not on that deck there was not, at least.

Q. Was there any watchman?

A. None that we knew of—none that I could see.

Q. Do you know whether or not there was any watchman on the decks below at that time?

(Testimony of E. J. Grover.)

A. Why no, I don't know, of my own knowledge, whether there was or not.

Q. What did you next do after the boat had started on and given up the man?

A. I turned to the captain and told him it was a cold-blooded piece of murder as I thought.

Mr. BRONSON.—I move to strike out what the witness said to the captain as irrelevant, immaterial and incompetent to the issues in this case.

Q. (Mr. BYERS.) That is not what I referred to; what I referred to, and what I refer to is, what did you do with regard to this port, did you make any examination of it?

A. Mr. Dahl came up and—

Mr. BRONSON.—The Court has not ruled on the motion.

The COURT.—I will overrule your motion. (Exception noted for defendants.)

A. (Continuing.) Mr. Dahl came up and asked me to go below and look at the port, which I did, that is, he asked Mr. Hohl, I think, and I think there was another gentleman, and we went down below and examined it.

Q. (Mr. BYERS.) In what condition did you find it?

(Testimony of E. J. Grover.)

A. Why, we found that on one side, on the first side as we went in—we went down the back stairs and through the dining-room and kitchen, as I remember, and went up front, and as we came to the first fastening on the left-hand side there was that fastener there, it was kind of loose—it screwed on with some kind of a screw, as I remember, and there was a hook or catch or dog on the outside to hold in the port like. The one on the other side was off—there was not any there.

Q. Now, the port at this place where the dogs usually catch on it, in what condition was it?

A. What's that?

Q. The port itself, or the gate.

A. Around the fastenings there it is all wore out and the port absolutely is old, and was worn at that time.

Q. Now, can you describe to the jury, Mr. Grover, what would naturally take place in a man opening that port, or freight gangway?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent and the witness is not shown to be competent.

(Objection overruled. Exception noted for defendants.)

A. Do you wish me to tell what I have seen them doing when they are opening those doors? I have

(Testimony of E. J. Grover.)

seen them open this port and those doors on that same boat.

Q. (Mr. BYERS.) Then you may state that.

Mr. BRONSON.—I object to that for the same reason.

(Objection overruled. Exception noted for defendants.)

A. I have seen them take and push out the doors to fasten— push out the doors and then they would lift up the port and unfasten it if it is fastened; and if it is not fastened, of course, it would give way, but where it is fastened I have seen them unfasten it and take and swing it out and bring it in endwise; that was the way I have seen them open this particular port.

Q. (Mr. BYERS) If this port, after these doors are unclosed which embraced it, and a man was pulling these around—if the port was unfastened what would be the probable result?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent.

(Objection overruled. Exception noted for defendant.)

A. The man and the port both would go out, because the port is set in just exactly like that (illustrating).

(Testimony of E. J. Grover.)

Mr. BRONSON.—I object to this witness volunteering.

A. (Continuing.) I can explain just how that port is.

Mr. BRONSON.—This witness is volunteering.

The COURT.—You may explain it. Objection overruled.

(Exception noted for defendants.)

A. (Here witness illustrates the position of the port.) If that is the outside of the vessel (showing) the port is inside of it (showing). We will say this is the port here (showing) the port is set in just like that just exactly (showing). It is across like that, so that it has to be fastened in to keep from going out. It is set in just like that (showing) and this holds it from going any farther (showing). That could not come in and it could not get by this, and I don't know that it is quite that large; it might be a little taller there (showing) and there is a fastener that goes right through the ship's side and a plank comes out here and the fastener is fastened by a screw on the inside that tightens up. Now, on the one side the fastener was there and on the other it was not. In order to take that port out they have to unfasten it and push it that way (showing) and

(Testimony of E. J. Grover.)

swing it out and bring it in endwise. That was the way they opened it.

Q. (Mr. BYERS.) On what side of the ship was the port that was picked up?

A. It was just in the rear of the ship when it was picked up, it had gone by with the man. It followed the man right up; that is, the man came first and the port came right alongside.

Q. Was there anything said at the time by the officers or crew as to how the man got overboard?

Mr. BRONSON.—I object to that as irrelevant, immaterial, incompetent and not part of the *res gestae*.

(Objection sustained.)

Q. (Mr. BYERS.) Taking the whistle that came up from the engineer as a basis, did you see any light at or near that time on the water?

A. Yes, as I explained, I think, the light—we were looking right out that way (showing) and we saw the light, and just then there was a racket and the light went out and the whistle. That is they blew up through there. It was all done just almost instantaneously, it seemed as though they had thrown the doors open and they had come closed again and the man had whistled up that he had fallen overboard.

(Testimony of E. J. Grover.)

Mr. BRONSON.—I object to that and move to strike out that answer of the witness.

Mr. BYERS.—I will fix it in just a moment.

The COURT.—Did you hear what came through the tube?

A. No, I did not.

The COURT.—Then don't tell what you don't know.

Mr. BYERS.—I will fix that by this question.

Q. Was there any other way that the mate could have discovered what was wrong, in the pilot-house?

The COURT.—You don't want this witness to argue the case—you are here to argue the case.

Q. (Mr. BYERS.) Was there any message came up to the mate in the pilot-house from below?

Mr. BRONSON.—I object to that, as he said he did not know.

Q. (Mr. BYERS.) Was there any message came up—I will put in that way—was there any messenger came up to the mate in the pilot-house from below?

(Objected to and objection sustained.)

(Testimony of E. J. Grover.)

Mr. BYERS.—Does the Court sustain it on account of the substance or on account of the form of the question? I will state what I desire to prove.

The COURT.—I understand, you are trying to eliminate every other possible way by which the mate could have obtained the information.

Mr. BYERS.—That is it exactly.

The COURT.—That is too long a process; you can prove any facts that the witness knows, but simply to have him establish an argument is unnecessary and useless. I will sustain the objection.

Cross-examination.

Q. (Mr. BRONSON.) When did you say the vessel was reversed?

A. I don't understand your question.

Q. When did you say the vessel was reversed?

A. I didn't state. I stated that I did not know exactly when it was, but it was going back after we started out and I got the life preserver, that I do know, but just when it was reversed I could not state.

Q. (The COURT.) Did you notice whether the mate signalled to the engine-room before the captain came out or not?

A. I don't know that he did, I don't think that he did, but I could not be positive, only that I didn't see him or hear him anyway.

(Testimony of E. J. Grover.)

Q. (Mr. BYERS.) How long was it from the time that the first alarm was given until the boat finally reached the water?

Mr. BRONSON.—You mean a small boat?

Mr. BYERS.—Yes, a small boat.

A. We put it at over ten minutes at that time right there.

Q. (Mr. BRONSON.) Did you hold the watch on it?

A. No, sir, but just from the circumstances what was done; it took them more than ten minutes because we could not have done what we did in less than that time.

Q. I asked you whether you held a watch on them?

A. No, sir, we didn't—just the circumstances.

Q. You were not at all excited about it, were you?

A. I don't think I was near as excited as the rest of the crew were.

Q. I asked you whether you were excited.

A. No, sir, as a matter of fact I think I was very cool.

Mr. BYERS.—I desire to offer in evidence a certified copy of the certificate of inspection of the Sound steamer "Lydia Thompson," certified by the collector of customs.

(Testimony of E. J. Grover.)

Mr. BRONSON.—There is another question I would like to ask Mr. Grover.

Q. Did you remain in the pilot-house after you went in there all the while?

A. From the time just after we left the south side, as I spoke of?

Q. Yes.

A. As near as I can remember I did, yes, sir.

Q. Were there any lights on the forward part of the ship? A. On the forward part?

Q. In front of the pilot-house.

A. I think there was a lantern or something up in front, as I remember.

Q. That is high enough up to be out of the way of the helmsman.

A. What is the helmsman?

Q. The man at the wheel.

A. High enough to be out of the way of him?

Q. Yes. A. Yes.

Q. It is intended to be dark there in front?

A. I don't know what it is intended to be. You can see out always—you can see ahead, because that is why we stayed in there so that we could watch out.

Q. And you remained in the pilot-house all the time?

A. Yes, I think, as a matter of fact, I was there

(Testimony of E. J. Grover.)

all the time, it might have been possible that I stepped out, but I don't believe I did.

Mr. BYERS.—I offer that certificate in evidence.

Mr. BRONSON.—We object to it as irrelevant, immaterial, incompetent and there is no provision for the use of such a record as a matter of evidence. I do not see what issue it meets in this case.

Mr. BYERS.—The object of offering that is simply to show the number of men that are by law required to be carried upon that steamer. Now, Captain Barlo stated to the Court and jury the number of men that were actually on it. This is offered in evidence to show the number of men that should be on it. As a matter of law it is necessary for them to carry that number of men upon the vessel for its proper management, and if they do not it is negligence.

Mr. BRONSON.—I do not think we could be found guilty of some negligence unless it is connected with this case in some way.

(Objection overruled. Exception noted for defendants. Document received in evidence and marked Plaintiff's Exhibit "A.")

Mr. BYERS.—It has been admitted that the American mortality table shows that the expectancy of life of a man fifty-six years of age is 16.72 years.

Here the plaintiff rests.

(Testimony of E. J. Grover.)

Mr. BRONSON.—If the Court please, the defendant in this case desires to ask the Court to instruct the jury to bring in a verdict for the defendant. The plaintiff in this case has failed—

The COURT.—Under the rules, you cannot make that motion until you have offered any evidence you may have in the case. You may move for a nonsuit if you want to at this time and not for an instructed verdict.

Mr. BRONSON.—That is the motion I intended to make. The plaintiff in this case has failed to make out a case against this defendant in a number of particulars; in the first place it has not been shown that the deceased Mr. Lavender was instructed to open the particular port which they assume he fell through. There are two ports on the vessel, one on either side; there are two parts on every port. It has not been shown that the deceased was instructed to have anything to do with this lower port. It has not been shown, if your Honor please, whether the deceased fell out of the port or whether he jumped overboard or how he got out of the vessel. There is not a word of evidence here—while a person might assume a certain state of facts—upon which the jury could draw a conclusion, or upon which the Court

could say that, as a matter of law, there is a possibility of a definite answer having been given. It is not the province of the jury to guess; it is not the province of the Court to assume that a state of facts which might have existed could have existed unless there is some evidence that it did exist. Now, there is not any evidence before the Court here of anything having happened to this man or done by this man from the time when he left the pilot-house. There is nothing to show, not one scintilla of evidence, of a competent character, to show the Court or jury how he got off that boat. I submit, if your Honor please, that there is not any evidence here tending to show that there was anything the matter with the boat. Two or three witnesses have testified that this port was held in place in one end by a clamp and when it came back on the boat afterwards that there did not appear to be a clamp on that end, but one witness testified to the jury that there was a rope there. If your Honor please, there is no evidence here to even suggest to the Court that that is the only proper way in which that port could have been fastened; that it could not have been fastened with a rope or other appliances which are used on board ships, just as safely as with any particular clamp. There is not any evidence here that this is an improper way. The defendant in this case is not bound by the

rule to use anything more than reasonable and ordinary care, and there is no evidence here that we did not use reasonable and ordinary care. There is no evidence here that the defendant in this case was guilty of any breach of duty with reference to that port. The evidence is that the plaintiff's intestate was a sea captain, the Court assumes, as a matter of law, that he was experienced in such things; that he knew about such things; that he must have assumed the ordinary risks which were incidental to that employment. Anybody can fall off a boat; anybody can jump off a boat. We do not know how he got off; we do not know anything about it. Is it to be said that the jury should guess and the Court should guess or anybody should guess as to how he got off? There is not any evidence here, if your Honor please, as to any negligence after he got off. The Court knows that time must be consumed, some time, in the maneuvering of a boat. This boat was proceeding; she had to be stopped, she had to be reversed, the moment a man fell off the boat that was moving through the water he began to stay behind and it takes some time to back the boat up; it takes some time to get the small boat into the water. There is not any evidence here that any unreasonable time was taken, or any unusual extraordinary time was taken or that a boat could have been got into the

water in a minute or half a minute or ten seconds; there was not any evidence here that anybody was guilty of any negligence in this transaction from start to finish. As to the identification of the deceased and the fact that he was drowned there is not any evidenece of a conclusive character on that subject. I do not want to take up the Court's time unduly in the matter, but a case which was almost identical with this case was reported in the *North-eastern Reporter*, a case from the Circuit Court of Appeals in New York, in the 40th *Northeastern*, page 507.

(Here counsel reads case to the Court.)

We submit that the plaintiff in this case has wholly failed to make out a case.

The COURT.—I will deny the motion. The jury will understand that my ruling on this motion is not an indication of any opinion that the Court has as to whether the evidence is sufficient to prove the case or not. I am only holding that it is a proper case to be passed up to a jury for a jury to consider the evidence and weigh it and decide what the facts are or at least to tell whether there is sufficient evidence to justify a finding for the plaintiff; the plaintiff, having the burden of proof to prove affirmatively the

(Testimony of Charles Stanley.)

charges in the complaint upon which her case has rested, you can go on with the case.

(Exception noted for defendants.)

CHARLES STANLEY, produced as a witness in behalf of defendants, being first duly sworn, testifies as follows:

Q. (Mr. BRONSON.) State your name.

A. Charles Stanley.

Q. What is your occupation?

A. Seaman at the present time acting as mate and pilot on Sound vessels.

Q. Have you a license as mate?

A. Yes, sir, mate and pilot.

Q. And you had such at the time—on the 3d of November, 1904?

A. Yes, sir.

Q. State what took place on board the "Lydia Thompson" on leaving, or after leaving Bellingham on that night.

A. On leaving Bellingham that night?

Q. Or early in the morning.

A. Early in the morning, we left there at 2 o'clock. Between the docks of Bellingham and Fairhaven, I instructed Mr. Lavender to go below and see that the ports were securely fastened and also to close the upper ports as it was blowing a strong southeast wind out in Bellingham Bay. Just

(Testimony of Charles Stanley.)

before we arrived at the Fairhaven dock he came back up into the pilot-house and told me he had done so. Well, we left Fairhaven and shortly after rounding the—

Mr. BYERS.—If your Honor please, I will object to the witness stating what Captain Lavender told him prior to that time.

(Objection overruled.)

A. (Continuing.) After rounding Coose Point and going into Bellingham Bay two gentlemen came up to the pilot-house and asked whether they could not come inside as it was pretty rough and they would like to see how we managed the ship in rough weather. One of the gentlemen I recognized as Mr. Grover, the other I did not; but they stayed in the pilot-house for quite awhile and finally one of them went out, Mr. Grover remaining, and probably about halfways between Fairhaven and our first landing at Olga, Mr. Lavender who was steering, asked me if he could not go below as he felt sick, and I let him go below; he went down for about ten minutes and returned and took the wheel and remained at the wheel until we came within about eight or ten minutes of Olga dock. Mr. Grover in the meantime had lay down on the settee—a cushioned seat that runs the length of the pilot-house and was asleep. During this —just before arriving at Olga and be-

(Testimony of Charles Stanley.)

fore telling Mr. Lavender to go down, I told Mr. Lavender to go down just before we got into the dock at Olga about eight minutes before getting to the dock, to go down and open up the port on the port side, the upper ports—we had about fifteen packages of freight for Olga and I told him the manner in which we discharged the freight; I told him to open the upper ports and when we landed at the dock I would go down and help him place our gangplank on the lower port, and I would stand on the gangplank and pass the freight up to the dock. Well, just after coming out of what we call Obstruction Pass, I had the windows on the starboard side of the pilot-house open watching for the reef there, that is called Seal Rocks, and the first thing that I knew of anything was wrong was when the engineer whistled up and told me the watchman was overboard. I immediately backed the vessel, or at least sent down the bells to back the vessel, and shook up this gentleman who was lying asleep on the settee, and asked him to call the captain as I wished to run along and see if I could not hear the man crying out, and locate him. He seemed to have some trouble in understanding what I meant him to do and I shoved past him and ran out and called the captain, and I suppose, in no time at all, the captain was in the pilot-house in his night clothes and I

(Testimony of Charles Stanley.)

immediately went down below, and some of the crew were up then and I got all hands up to the lifeboat and we started to clear her and to lower the boat.

Q. Did you instruct Mr. Lavender to open the lower part of this port?

A. No, sir.

Q. Was it necessary or proper to open the lower part?

A. No, sir, and I did not intend for it to be opened. I told him so—I explained the manner in which we were to put the freight off.

Q. Well, what did you do about getting out the boat?

A. Well, the captain took charge of the vessel; he came into the pilot-house and took charge of the vessel and about in five minutes' time we had backed up and come around about where we supposed this man was, and we had our boat hanging at the guard then and I and another young man slid down the falls into the boat and cast it adrift and pulled away from the vessel. I never heard the man holler after we lowered the boat or after we got into the boat, and I had nothing to go by at all, but we pulled off in the direction in which I had heard him holler last, as near as I could judge. We went out probably about three or four lengths of our small boat and we bumped up against the port. In the meantime there

(Testimony of Charles Stanley.)

was probably six or eight people on deck hollering, here he was here, and here he was there, and imagining they saw him in all directions.

Q. Did you see him after that?

A. No, sir, I never saw him and I never heard him.

Q. What did you have to do in order to lower the boat?

A. We had to take the covering off and cut four lashings.

Q. What's that?

A. We had to take the covering off—the tarpaulin that covers the boat and to cut four lashings, two on each side of the boat.

Q. What are the lashings for?

A. They are to hold the boat from going overboard and to keep it steady on the deck.

Q. How did you take it off?

A. Cut it off—cut the lashings that hold it.

Q. Did you have any trouble with the falls?

A. No, sir, the boat went down nice.

Q. Did you have any delay?

A. No, sir, not at all—the boat was ready by the time the steamer's headway was stopped, to pull out.

Q. What was the course of the vessel as the result—you say you signaled down to reverse?

(Testimony of Charles Stanley.)

A. Yes, sir.

Q. Do you know whether she was reversed or not?

A. Yes, sir, she was reversed.

Q. What effect does it have on the steamer "Lydia Thompson" as to her course?

A. Well, the vessel—do you mean in backing—which way she would go?

Q. Which way would she back?

A. She would back around to port, to the left—she would back strong to port.

Q. What was the condition of the weather?

A. It was a very dark stormy night.

Q. Was there any considerable sea in this bay?

A. Not in the bay, it was only swells—ground swells—or a swell from the sea outside—a little swell running.

Q. About what time in the morning was it?

A. I should judge it was about a quarter past four.

Q. A quarter past four in the morning?

A. Yes, sir.

Q. What is the formation of the land as to elevation around this bay?

A. Well, from Obstruction Pass up to Olga dock the land is rather high.

Q. Now, calling your attention to identification

(Testimony of Charles Stanley.)

No. 2, will you show the jury on this chart where the place in question is (showing chart to witness)?

A. Here is Olga Bay (showing).

Q. Where this black spot here is?

A. That is Olga, that is on Orcas Island.

Q. What is the formation of the land surrounding that?

A. Here is a high mountain on this portion here—all this part is a high mountain.

Mr. BYERS.—I cannot see that this is material or competent.

Mr. BRONSON.—It is tending to show the condition of the weather and the effect upon light.

The COURT.—I think it is immaterial to show the formation of the land along there.

Mr. BRONSON.—I propose to show, if the Court permits me, that the land is very high and it tends to deepen the shadow on the water, as showing what the ability to see was there.

The COURT.—I will sustain the objection.

(Exception noted for defendants. And the chart is marked “Defendants’ Refused Exhibit No 2.”)

Mr. BRONSON.—Do I understand the Court sustains an objection to any questions relative to how high the land is?

(Testimony of Charles Stanley.)

The COURT.—Yes. You can prove that it was dark without going to the unnecessary trouble of putting maps and charts into the case and testimony as to the height of the mountains surrounding the bay.

Mr. BRONSON.—He has already testified it was a very dark night.

The WITNESS.—It was a very dark night, sir.

The COURT.—Well, that is all that is important about it.

Q. (Mr. BRONSON.) Did you hear Captain Barlo say anything in calling the boat in, about the fact that the man in the water could go to hell, or something like that?

A. No, sir.

Q. What? A. No, sir.

Q. Did you hear any words of a similar character at all? A. No, sir, nothing at all like that.

Q. Who called the captain, yourself?

A. Yes.

Q. Did he respond immediately?

A. Yes, sir, he did.

Q. Did he wait to dress?

A. No, sir, he did not dress.

Q. How was he clothed?

(Testimony of Charles Stanley.)

A. He came out in his underclothes, just as he got out of bed, in his underclothes.

Q. Have you any knowledge of how long it takes to back and stop the "Lydia Thompson" when she is under way as she was at that time?

A. Yes, sir.

Q. Have you had occasion to time it?

A. Yes, sir.

Q. In what way?

A. In coming up to docks.

Q. What length of time is required?

A. In coming up to a dock, about two minutes, that is rather a fast landing, though.

Q. What is the extreme, what is the outside?

A. Do you mean the least possible time?

Q. No, the longest time that is ordinarily consumed.

A. About three minutes.

Q. From two or three minutes?

A. Yes, to be safe, not to go in too fast—it can be done in a good deal less.

Q. Did you take any longer than usual in stopping and backing her at that time?

A. No, sir.

Q. Do you know what amount of time was taken, approximately, in stopping the vessel and getting the boat down?

A. I should judge about five minutes.

(Testimony of Charles Stanley.)

Q. Until the small boat was where?

A. Until the small boat was in the water.

Q. Did you hear the captain when he did recall the boat? A. I believe I did.

Q. Do you remember exactly what he said, or substantially?

A. Yes, sir, nearly; I remember pretty nearly what he said.

Q. Well, what did he say?

A. He said, "It is no use, boys, the poor fellow is gone and you may as well come back."

Q. Did you have occasion to notice the condition this port was in previous to this occurrence?

A. Yes, sir.

Q. Do you know who last had to do with this particular port in question?

A. I did, as far as closing it—as far as putting it in is concerned?

Q. Yes. A. Yes, sir.

Q. And where was that?

A. At the town of West Sound.

Q. During what time?

A. Well, that was probably late in the afternoon, probably about five o'clock.

Q. What was the condition of its fastenings?

A. They were all right.

Q. How was it left?

(Testimony of Charles Stanley.)

Q. How was it left?

A. It was left all right, both clamps were screwed down tight and the port was in solid when I left it. I brought the crew around with me and instructed them how to handle this port.

Q. What was done with this port after it was picked up?

A. It was put aboard from the small boat and after leaving Olga I believe it was put in.

Q. What shape was it in when it was put in?

A. I put it in just the same as it was before, the port was all right and both clamps were there—I never had occasion to get another.

Q. How's that?

A. I didn't have occasion to get any other clamp, both clamps were in, both fore and aft.

Q. Did you have any occasion, in speaking with Captain Lavender relative to the ports, to find out whether he understood about those ports, in opening and using them?

A. I suppose he did, yes, sir. He went—when I told him to go down and came back and reported they were all right. He was a seaman, I supposed.

Q. That was at what place?

A. Between Bellingham and Fairhaven.

Q. Had you had any previous conversation with him or had you explained the ports to him in any way or had any talk about them?

(Testimony of Charles Stanley.)

A. When I instructed the crew at West Sound I believe he was standing there along with the rest of them.

Cross-examination.

Q. (Mr. BYERS.) Who was your second mate?

A. The stevedore.

Q. The stevedore was the second mate?

A. Yes, sir.

Q. Did he have any officer's papers or license?

A. He was not required to hold a license.

Q. For second mate?

A. No, sir, not on the Sound boats.

Q. You had taken on a number of new men that morning, hadn't you? A. Yes, sir.

Q. You had something of a strike, as a matter of fact, on board the boat, didn't you?

A. Yes, sir.

Q. You had taken on a green crew?

A. Yes, sir.

Q. And this was the occasion of your instructing the men at West Sound, was it? A. Yes, sir.

Q. And you think Captain Lavender was among them? A. Yes, sir.

Q. You do not know whether he was or not?

A. No, sir, I could not swear to it.

(Testimony of Charles Stanley.)

Q. You would not consider it necessary to instruct Captain Lavender around about a boat of this character? A. No, really not.

Q. He was an experienced seaman?

A. He was an experienced seaman.

Q. Now, Mr. Stanley, you instructed him to go down and open the port on the port side?

A. Yes, sir.

Q. And after he was overboard you found the port on the port side completely open, didn't you?

A. How's that?

Q. After you found he was overboard, you found the port on the port side completely open, didn't you? A. Yes, sir.

Q. Now, you had instructed him not to take out the lower part of the port? A. Yes, sir.

Q. Now, how do you account for the fact that the lower part of the port was taken out?

Mr. BRONSON.—I object to that as calling for a conclusion.

(Objection overruled. Exception noted for defendants.)

A. You want to know how?

Q. (Mr. BYERS.) How do you account for it—explain it, in other words.

(Testimony of Charles Stanley.)

A. The only way I have for accounting for it is that he misunderstood me.

Q. The only way you can account for it is that he misunderstood you?

A. That he misunderstood me.

Q. If he did misunderstand you, Captain, as a matter of fact, when he or you or anyone else would go to take the upper part of the port out, you would open the doors that way (showing)?

A. No, sir.

Q. You would reach out in this manner with your arm, and fasten them on the outside?

A. No, sir.

Q. How do you do it?

A. To open the upper doors there was ropes or lanyards connected to the center of these swinging ports that reached around the outside of the vessel and go through a little hole that was bored there on purpose to receive them and come in again and in again; at one time when I was on the boat—

Q. Were they on there at that time?

A. Yes, sir, they were there then; I put them in there myself.

Q. When did you put them in there?

A. When I first went on the steamer.

Q. How long was that prior to this time?

A. I went on there in August.

(Testimony of Charles Stanley.)

Q. And so, because they were on there in August, you think they were that night?

A. I know they were because I saw them there several times.

Q. Now, if this lower part of the port was, as a matter of fact, unclamped or had no clamp on one side, when you would swing these other doors back with the lanyards, this port would drop out?

A. Not necessarily; it would take a pretty good shore to shove it out.

Q. Well, what would hold it?

A. Well, the way it was set in—it was beveled in there and in pulling it in and screwing it up with the clamps it would come in pretty tight there.

Q. But suppose the clamp was not there—what would there be to hold it I say, if it was not clamped?

A. Well, it would remain of its own weight and the general pressure necessary to bring it in.

Q. It would remain there, as a matter of fact, would it not, until Captain Lavender or some one else should lean against it and then it would go out, wouldn't it?

A. It would go out if anyone leaned against it, if the clamps were not on, certainly.

Q. Now, something must have made it go out?

A. Yes.

(Testimony of Charles Stanley.)

Q. It went out? A. Yes, it went out.

Q. You instructed Captain Lavender not to take it out? A. That was the instructions.

Q. In other words, you would have laid the plank on the top of this railing? A. Yes, sir.

Q. And that was what Captain Lavender was instructed to do?

A. That was what he was instructed to do.

Q. And from there you would run the plank to the dock? A. Yes sir.

Q. This lower part of the port is a heavy gate?

A. It is not very heavy, but it is solid.

Q. It is heavier than this railing, if this were solid?

A. About that.

Q. As a matter of fact, it is the formation of the side of your vessel, is it not a section cut out of the side of the vessel?

A. It is a section cut out of the side of the vessel.

Q. And when it is firmly clamped in it affords every protection of the vessel's side above the lower deck? A. Yes.

Q. And that is what it is for? A. Yes, sir.

Q. And Captain Lavender, as an experienced seaman, if that were all right, would just be as likely to press against that as any part of the vessel?

A. That I could not say.

(Testimony of Charles Stanley.)

Q. Would not any seaman rely upon the fact that that was firmly clamped as a part of the side of the vessel?

A. I could not say for others, I know for myself I would not.

Q. You would not push against it even if it were fastened tight? A. No, sir.

Q. You say that Captain Lavender asked you for permission to go below, that he felt sick?

A. Yes.

Q. Was Mr. Grover present when he made that request? A. Yes, sir; he was.

Q. Was Mr. Dahl present when he made that request? A. No, sir; he was not.

Q. They asked you to see how you would manage the vessel when they went in there—that is, Grover and Dahl—they asked permission to go into the officers' cabin to see how to manage the vessel in rough weather? A. Yes.

Q. When you got behind the high mountain the water was calm?

A. Yes, at Olga there was nothing but the ground swell running in.

Q. In fact it is a very well protected portion of the water? A. Not to speak of.

Q. Is it not a portion of what is called East Sound?

(Testimony of Charles Stanley.)

A. Yes, but in case of a southeast wind it is a very mean place and very rough.

Q. Was this a southeast wind?

A. It was a southeast wind, but it didn't happen to be blowing so hard there.

Q. You say Mr. Grover was asleep?

A. Yes.

Q. And did you waken him? A. I did.

Q. And it was you and not Mr. Grover or Mr. Dahl who wakened the captain?

A. I called the captain myself.

Q. Are you sure Mr. Grover and Mr. Dahl did not waken him? A. I am.

Q. You are positive of that? A. Yes, sir.

Q. Now, what did you tell Mr. Grover and Mr. Dahl to do?

A. I only told Mr. Grover—the other gentleman was not present at all.

Q. The other gentleman was not there?

A. He was not in over half the trip.

Q. When this whistle came up the tube was not Mr. Grover there and was not Mr. Dahl in there?

A. No, sir; there was only two of us in the pilot house.

Q. You are sure about that?

A. Yes, I am positive.

(Testimony of Charles Stanley.)

Q. Where did you get your knife to cut away that life preserver—those ropes that fastened the life preserver? A. I used my own knife.

Q. You used your own knife? A. Yes.

Q. Did you have a knife? A. Yes.

Q. As a matter of fact, didn't you borrow Mr. Grover's knife? A. I did.

Q. What did you borrow it for, if you had one of your own?

A. I could not locate my own when I first went to look out, and afterwards when I went up to the boat I picked it out of the back pocket of my trousers.

Q. You were quite a good deal excited?

A. Not at all.

Q. Mr. Lavender had just come on your boat—this was his first trip? A. Yes, the first trip.

Q. You say the captain called to you to come back—you were out in the boat, were you?

A. Yes, sir.

Q. Rowing out? A. Yes, sir.

Q. The oars make some noise, do they?

A. Well, we were right alongside the steamer then.

Q. Right alongside the steamer?

A. Yes, sir.

Q. And you did find the port, did you?

(Testimony of Charles Stanley.)

A. Yes, sir.

Q. And you brought that back?

A. Yes, sir.

Q. And that is the same port that is in the boat now?

A. Yes, sir.

Q. And you heard what the captain said?

A. Yes, sir.

Q. You are sure you heard it all?

A. Yes, sir.

Q. Now, the captain was in his underclothes, wasn't he?

A. Yes, sir.

Q. He would be likely to be impatient standing around in his underclothes and he would be likely to be quite impatient?

A. I do not know anything about that.

Q. You are sure you heard what he said?

A. Yes, sir.

Q. And you say that he did not say what Mr. Dahl has reported?

A. I do.

Q. Now, as a matter of fact, didn't you tie that port in after you got to Olga?

A. After what?

Q. After you got to Olga didn't you tie that port in with ropes?

A. No, sir.

Q. You took a man on board the next day to take Mr. Lavender's place by the name of Brewster, didn't you?

A. What name?

Q. Brewster.

A. I don't recollect.

(Testimony of Charles Stanley.)

Q. You took on a man to take his place.

A. I don't recollect the name.

Q. Didn't you tell Mr. Brewster, or the man you took on, that that port was out of order and had been out of order for some time and it was necessary to keep it tied?

A. No, sir.

Q. And it was tied? A. No, sir.

Q. Wasn't it tied the next day, on your next trip going back?

A. No, sir; it was clamped in.

Q. Clamped in with the same clamps?

A. I am positive of that.

Q. Didn't you say to a Mr. French, who went on board the next day or a day or two following, saying that you kept it tied with a rope?

A. I don't even know the gentleman, I never even heard of him that I know of.

Q. A gentleman that went up to search for the body of Mr. Lavender?

A. I never had any conversation with the gentleman at all regarding the port.

Q. Did you see him aboard the next day?

A. Yes, they had the port in place.

Redirect Examination.

Q. (Mr. BRONSON.) This trip began where and when?

(Testimony of Charles Stanley.)

A. Well, it began in Seattle, towards Bellingham and return.

Q. Leaving here on Tuesday?

A. We left here on the Tuesday night—I don't recall the days, but we would have left here—if November 3d was Wednesday we left here Tuesday night.

Q. That gives you all the next day, until about midnight, when you got up to Bellingham.

A. We got up about eight o'clock in the evening, in Bellingham.

Q. You say in answer to the counsel's question that Mr. Grover was asleep there on the settee?

A. Yes, sir.

Q. Is that exactly a definition of his condition?

A. Well,—

Q. Do you know whether he was sober or not?

A. I don't think he was, no, sir.

Q. Do you know whether he had been drinking or not?

A. He appeared to me pretty well intoxicated when he came in the pilot house.

Q. From what do you judge that?

A. Well, from his boisterous manner and also from the smell—the fumes of the liquor.

Recross-examination.

Q. (Mr. BYERS.) Were you drinking any?

(Testimony of Charles Stanley.)

A. No, sir.

Q. You didn't take any drink at all?

A. Yes, sir.

Q. You didn't drink any that day?

A. No, sir; nor long before that.

Q. Was Mr. Dahl also under the influence of liquor?

A. I could not say about him—no, he didn't seem to be.

Q. Did you make any note of Mr. Dahl's condition?

A. No, sir; he didn't have anything to say while he was in there; the other gentleman was doing all the talking.

Q. And you think the reason Mr. Grover was asleep was because he was partly intoxicated, was that it?

A. I suppose the man felt sleepy and he just went down and went to sleep—I could not say whether it was the liquor or anything else that caused him to be sleepy, that I don't know.

Q. Has your statement in regard to him got anything to do with the fact that he was rather inclined to take exception to the way you tried to rescue the man?

A. Not at all.

Q. He told you about what he thought of the proposition, didn't he, at the time?

(Testimony of Charles Stanley.)

A. I never heard the gentleman say a word one way or the other regarding the way we were trying to save him.

Q. You didn't hear him say a word about it?

A. He never spoke to me until to-day.

Q. Did you overhear him saying anything?

A. No, sir.

(Testimony of witness closed.)

SAMUEL BARLO, produced as a witness in behalf of defendants, being first duly sworn, testifies as follows:

Q. (Mr. BRONSON.) Were you the master of the "Lydia Thompson" on the 3d of November, 1904? A. Yes, sir.

Q. How long had you been master?

A. I had been since the 3d day of August.

Q. How long had you been on that run?

A. About 15 or 16 years.

Q. As master?

A. No, sir; I started in deck-hand on the run.

Q. How long have you been master?

A. I have been master going on six years.

Q. Was your watch off or on at four o'clock in the morning? A. My watch off.

Q. Where were you? A. I was asleep.

Q. What wakened you?

(Testimony of Samuel Barlo.)

A. Mr. Stanley called me and sung out and said the watchman was overboard.

Q. The mate who just testified here?

A. Yes, sir; Mr. Stanley.

Q. What did you do?

A. Why, I went right in the pilot-house immediately, and he reported, he said, "She is full speed astern," and with that he went off and sung out, "All hands on deck," and I could hear him the whole time—"to swing the boat." Well, I sung out to them to hurry up and get the boats out as quick as they could. In the meantime she was reversing and I backed up and I heard this man holler off on my starboard bow and I went ahead when I heard him off on the starboard bow, and seeing that I was backing I went ahead full speed until I heard a faint holler and I should judge it was just about where I wanted to start to reverse the boat and to get to him and I reversed to full speed to stop her, and I brought her to a dead stop and I thought I was in about the neighborhood of where he was and then I went out on deck. Well, the boat was down and when I got out on deck some of them were singing out, "Here he is" and "here he is" and keeping me jumping backwards and forward on the boat finding out to see wherever there was any possible show of seeing him so that I could get the boat out and get

(Testimony of Samuel Barlo.)

him located, and the last time that I heard anything was when this Mr. Hohl—I remember him now, that he was aft, and he sang out, “Here he is,” he was just about the ladies’ cabin, at the door of the ladies’ cabin, that is about 15 or 20 feet from the stern. Well, I went on the run just as hard as I could go and pushed the people out of my way and got back there to see what I could see. I could not see nothing, but I immediately started the boat out in that direction. It was the last report I heard and I started out in that direction looking for him. I saw a chunk of wood going by the boat, I should say about, I should judge, about six foot long; that was about all that I saw in the water.

Q. Did you at any time see the man in the water?

A. No, sir; I never saw him at all.

Q. Do you know about how long it takes to stop the “Lydia Thompson” and make the turn which you made?

A. Yes.

Q. Upon what do you base that knowledge?

A. Not over five minutes.

Q. Upon what do you base that knowledge?

A. From landing at the dock and where we have been backing up several times and handling her and in that shape.

Q. About what time do you estimate it would take?

(Testimony of Samuel Barlo.)

A. Not over five minutes at the most.

Q. Where was the small boat when you got her stopped in that position?

A. She was in the water alongside of the boat.

Q. Was there any hitch or delay in getting the small boat down?

A. No, sir.

Q. In cases of accidents of this kind what is the duty of the small boat relative to leaving the steamer—when should she leave?

A. When the headway is off the boat.

Q. Was there anything left undone that could have been done to save this man?

A. No, sir, everything was done that could be done to save him.

Q. Who was it that was shouting out “Here he is” and “Here he is”?

A. It was everybody on the boat, I could not say who they were; but I remember that Mr. Hohl, on account of coming in pretty close contact with him, in getting by him at the time, and he hollered.

Q. Did you shout out to the mate or anybody to come on and let the man go to hell, or anything of that character?

A. No, sir, I did not.

Q. Did you use words of any similar import?

A. No, sir. I sung out to the mate, when we had made the search there and could not find him, I knew he was gone, that he was drowned then—that we

(Testimony of Samuel Barlo.)

could not hear nothing and could not hear him hollering or anything to find him, and it was a very dark night and I says to the mate, I says, "Well," I says, "we will have to give up the search," or some words to that effect—"we will have to give up the search and we will return here on our way from East Sound when probably it will be daylight," which we did when we returned from East Sound we came back and finished up the search in daylight.

Q. Did you have any doubt in your mind that whoever it was was drowned at that time?

A. No, sir, I didn't have any doubt but what he was drowned when we could not hear him any more.

Q. What was the condition of the weather?

A. Well, it was a very stormy night, blowing quite hard outside.

Q. Was it light or dark? A. Very dark.

Q. Could you see any distance from the vessel?

A. No, sir.

Q. Could you have seen a man in the water fifty feet away?

A. Not fifty feet, we could close to the vessel where the light shone on the water.

Q. Did you make any examination of the port that was picked up in the water? A. Yes, sir.

Q. And its fastenings on the vessel?

(Testimony of Samuel Barlo.)

A. Yes, sir.

Q. What condition did you find it in?

A. I found it in good condition.

Q. What was the condition of the clamps that held the lower port, after you picked up the port?

A. They were in good condition.

Q. Were they missing, either of them?

A. No, sir.

Q. What would you say, Captain, as to that being a safe and substantial method of holding that port?

A. Safe and substantial, as safe as could be made.

Cross-examination.

Q. (Mr. BYERS.) Captain, how long did you spend looking for this man that night?

A. I don't know just about how long it was; but we searched at least twenty minutes.

Q. How long was it before—what portion of that time was it before the boat was lowered?

A. I don't quite catch you.

Q. What proportion of that time had elapsed before the boat was lowered?

A. About five minutes.

Q. About five minutes? A. Yes, sir.

Q. What did you do the balance of the time?

A. We searched for him.

(Testimony of Samuel Barlo.)

Q. Well, you searched—what did you do—what constituted the search?

A. Well, we sent the boat out around in the vicinity of where we were looking for him in one place and another.

Q. How far did it go out from the large boat?

A. Well, I don't know how far she did go out; it went out of sight a couple of times that I could not see her.

Q. A couple of times?

A. Well, when I happened to be in the direction the boat was.

Q. And you were standing on the deck during this time?

A. Well, I was not standing very long at any place.

Q. Well, you were on the deck?

A. From the time the steamer was brought to a stop I was not in one place any length of time because I was all around the boat.

Q. You said the mate sung out, "All hands on deck."

A. That was when I first came up.

Q. What was your first order after taking the wheel?

A. For him to get their boat out.

Q. Who did you order?

(Testimony of Samuel Barlo.)

A. I ordered the mate.

Q. Where was the mate when you ordered it?

A. He was just going down the ladder.

Q. Captain, how did that port get out?

A. I don't know how it got out.

Q. You don't know how it got out—it was fastened in there substantially and as safe as a port could be, and it just got out—is that what you mean to tell this jury? A. I didn't tell them.

Q. You told them it was just as safe and substantial as a port could be, didn't you?

A. Yes, when it is fastened.

Q. And you don't know how it got out?

A. I don't know how it got out.

Q. You don't know anything about it?

A. No, I don't know how it got out.

Q. Do you know how the man got out?

A. No, sir, I don't know how he got out.

Q. Captain, didn't you say at about that time, that is the time that the boat was coming in, words in effect as follows: "Let the man go to hell, and bring in the port." A. I did not.

Q. You did not? A. I did not.

Q. You did not use any words of that kind?

A. No, sir.

(Testimony of Samuel Barlo.)

Q. Captain, did you give any order to lower that boat until the passengers, or some passenger requested you to do so?

A. There was no passenger requested me.

Q. There was no passenger requested you at all?

A. No, sir.

Q. They didn't say anything about a boat?

A. No, sir.

Q. Did they say anything about getting life preservers?

A. No, sir, I ordered the life preservers.

Q. What did they say?

A. I don't know what they did say.

Q. Well, you don't mean to say that they stood around there and didn't say anything?

A. Well, there was so many there I could not tell who was saying anything or what was said.

Q. How many were there there?

A. Well, I don't know, I didn't count them.

Redirect Examination.

Q. (Mr. BRONSON.) Captain, do you know how that port could have been gotten out by anybody if he wanted to get it out?

A. By letting go the fastenings it would go out that way, by letting go all the fastenings.

(Testimony of Samuel Barlo.)

Recross-examination.

Q. (Mr. BYERS.) Captain, what was the condition of that port the next day?

A. It was in good condition.

Q. Was it lashed in with ropes next day?

A. No, sir.

Q. It was not? A. No, sir.

Q. Was there any rope in connection with it the next day? A. No, sir.

Q. Captain, were you going to let that port go out the next day, by leaving it in the same condition it was? A. It was in good condition.

Q. It was in good condition? A. Yes, sir.

Q. But you knew it had gone out the night before and you took no provision to remedy it at all.

A. It was in first-class condition.

Q. What's that?

A. It was in first-class condition.

Q. It was in first-class condition?

A. Yes, sir.

Q. You didn't see the drowning man at all in the darkness? A. No, sir.

Q. You think these men were mistaken who think they saw him, and that they saw a chunk of wood?

A. I think they were.

Q. Were you acquainted with Captain Lavender?

(Testimony of Samuel Barlo.)

A. The first I saw him was on the boat there on that trip.

Q. You had been acquainted with him before that? A. No, sir.

Q. You never knew anything about him?

A. No, sir.

Q. Did you holler to the drowning man or shout to him? A. Yes, I sung out for to hang on.

Q. Did you hear him shout to you in return?

A. Well, yes, I heard him shout about three times.

Q. Did you call to the mate to bring in the port?

A. No, I did not.

Q. You did not call to the mate to bring in the port at all? A. No.

Q. During the time that you were endeavoring to rescue, or prior to the time that you were attempting to rescue the drowning man, where was the lookout?

A. I suppose he was working around the boat.

Q. Is that his position, working around the boat?

A. Everybody's position at the time of an accident—

Q. I said, prior to the time of the accident where was the lookout? A. I was not up to see.

Q. You were not—do you know whether there was a watchman employed? A. Yes, sir.

Q. Mr. Lavender was the watchman?

A. Yes, sir.

(Testimony of Samuel Barlo.)

Q. When he was employed at other duties, was there a watchman employed or equipped to take his place? A. The mate took his place.

Q. The mate took his place at the wheel?

A. Yes, sir.

Q. But who took the watchman's place?

A. Where?

Q. Anywhere—who was performing the duties of a watchman? A. After he was—

Q. When—now pay attention to the question—when the watchman was engaged in other duties, who was performing the duties of the watchman?

A. He was at his duty.

Q. What's that?

A. He was at his duty—he never done anything only what his duties is.

Q. Captain, do you understand my question? I say when the watchman was engaged in other duties, as opening the port, who, if anyone, was performing the duties of watchman?

A. That was his duty.

Q. It was the duty of the watchman to open the port? That is part of his duties—what are the duties of deck-hands?

A. Well, the duty of deck-hands is to attend to the lines and tend to the general order of unloading freight.

(Testimony of Samuel Barlo.)

Q. Do you mean to say it is part of the watchman's duty to open the port and do work of that kind? A. Yes, sir.

Q. How can he perform the duties of watchman while he is opening the port?

A. Well, while the watchman is?

Q. Tell the jury.

A. He is around the boat just the same as any other man, he has no particular duty, but to look after the boat in general.

Q. Captain, did you ever read the regulations prescribed by the United States for the conduct of a vessel of that kind? A. Yes, I did.

Q. You have read them—are you aware of one that says that the watchman at night shall at all times be about the pilot-house—are you aware of such a rule?

A. I am not aware of it saying that he shall be about the pilot-house.

Q. You are not—at least on your boat at this time that was not the way it was conducted?

A. Well, it is there or thereabouts.

Q. Now, down on the lower deck opening the port. is that near the pilot-house? A. Yes.

(Testimony of Samuel Barlo.)

Re-redirect Examination.

Q. (Mr. BRONSON.) How long would it take him to go down and pull that port open and come back up?

A. It would take about half a minute, between a minute and half a minute.

Q. (Mr. BYERS.) Suppose that the watchman goes overboard, who is there to hold the wheel while the mate or some one else notifies the captain?

A. Who is to hold the wheel?

Q. Yes.

A. Well, I am right close there.

Q. And so the mate then has to leave the wheel to notify you and to let the boat run itself?

A. A man don't necessarily have to stay there and hold the wheel—just as soon as that boat starts to back up the helm is no good to her, and as soon as she starts to back up the helm is no good—you can't handle it; the whole weight of the wheel and the boat going through the water is against the rudder, and it is impossible for a man to handle it.

Q. In case of an accident, if there is no watchman, who is to notify—suppose there is other accident—

Mr. BRONSON.—I object to that.

(Objection sustained.)

(Testimony of Samuel Barlo.)

Q. (The COURT.) Describe to the jury the proper method of opening that port.

A. Those ports—the lower one is fitted in, beveled in, and this port that fell out is beveled so that it would go in, and there was a clamp through here (showing), and it came in here and this clamp was put through the vessel, with a nut on the inside of it, and the clamp caught the port on the outside, and when we set it up it jammed in there tight to keep the water out, and it would jam in there so tight and then the top ones was put on on hinges—they swing in, and they had lanyards on the port about half way up and it went through the sides of the vessel and came inside and then fastened on the inside of the port again, and in opening those ports they just shoved them out a little and pull on the rope and fetch them wide open and make them fast, and when we went to close it you would let it go and they pull them shut again.

Q. (Mr. BYERS.) Captain, you just have to open the doors with your hands, don't you?

A. Well, just start them.

Q. You have to start them—or else these lanyards would be pulling straight against the door?

A. Yes.

Q. But you have first to open them with your hands—when you open those ports with your hands

(Testimony of Samuel Barlo.)

that releases the top of the lower port if it is not fastened with those clamps?

A. Yes, if it is not fastened.

Q. Captain, you came in on the boat last night, didn't you? A. No, sir.

Q. Did you see her last night?

A. No, sir.

Mr. BRONSON.—The "Thompson" is chartered to another company now, is she?

(Objected to as irrelevant, immaterial and incompetent. Objection sustained. Exception noted for defendants.)

A JUROR.—I would like to ask a question.

Q. (By a JUROR.) You never were acquainted with this man before?

A. No, sir, that is the first time I saw him.

Q. What was his condition that night when you saw him?

A. Well, the conversation that we had going into Bellingham that night, he told me that he had been sick for a good while and that he was just recovering.

Q. (By Another JUROR.) Is it usual when you call the men to lower a boat, to call to them, or do you have a whistle signal to lower the boat?

A. Well, we have a call for a man overboard.

(Testimony of witness closed.)

JOHN DUGALL, produced as a witness in behalf of defendants, being first duly sworn, testifies as follows:

Q. (Mr. BRONSON.) Were you aboard the "Lydia Thompson" on the morning of the 3d of November, 1904? A. Yes, sir.

Q. Where were you—did you see the watchman?

A. Yes, I came up out of the fireroom—

Q. Where were you when you saw him?

A. I was sitting on a chair looking at the water gauge.

Q. Looking at what?

A. Looking at the water gauge. I was sitting like this; when I came up out of the fireroom she was rolling a little, and about that time or just a little before, when I came up looked over to see how the water was and I heard somebody scraping with a foot like, and I looked back and the watchman was right behind me and I looked over the left like that and I saw him kicking the port with his foot, and I paid no more attention to it and I turned around again to keep watch of the water glass on the steam gauge, and maybe half a minute after that I heard the splash in the water and a holler like—and I turns around then and looks so that I would make no false alarm, I looked and the bottom of the port was gone, and I hollered to Mr. Granger, the watchman was overboard.

(Testimony of John Dugall.)

Q. Who was Mr. Granger?

A. The first assistant engineer.

Q. In charge of the engines? A. Yes, sir.

Q. What was he kicking?

A. He was trying to open the port with his foot
that way (showing).

Q. Which port? A. The port side port.

Q. Was it the lower port or the upper port?

A. I could not say which it was, it was none of
my business to look after the ports anyway, I did not
pay much attention.

Q. Was there anyone else there?

A. No, sir, there was nobody else there but Mr.
Granger, and he was working at the engine.

Q. Was Mr. Granger where he could have seen
the watchman?

A. No, sir, Mr. Granger could not have seen him
from where he was.

Q. Do you know what Mr. Granger did?

A. Yes, sir; Mr. Granger—

Q. Of your own knowledge do you know what he
did?

A. Yes, sir. I guess as soon as I told him he hol-
lered up through the speaking tube—

Q. Could you hear him?

A. No, sir, I could not hear him because he did
not holler very loud.

(Testimony of John Dugall.)

Q. Did you hear any engine signals come back?

A. Well, I don't remember, sir, but I know they reversed the engines and backed.

Cross-examination.

Q. (Mr. BYERS.) Did you see the port next day? A. No, sir.

Q. Did you quit the boat that night?

A. No, sir, I had nothing to do with it, it was not my business to know anything about ports.

Q. You did not see it the next day?

A. Well, I guess the port was there the next day.

Q. They brought in the port that night?

A. They brought in the port that night.

Q. Did you notice it the next day?

Mr. BRONSON.—I object to that—I did not ask the witness anything about the condition of the port at all.

(Objection sustained.)

(Testimony of witness closed.)

DAVID GRANGER, produced as a witness on behalf of defendants, being first duly sworn, testifies as follows:

Q. (Mr. BRONSON). Were you assistant engineer on the "Lydia Thompson" on the morning of November 3d, 1904? A. Yes, sir.

(Testimony of David Granger.)

Q. Along about four o'clock in the morning did you receive any word or hear anything said by Mr. Dugall relative to anything happening there?

A. Yes, sir, I heard a little faint cry first, and just at that time he hollered the watchman was overboard. I was standing right there at the throttle and I reached for the speaking tube and I whistled up to the mate and I got four bells right in succession and I reversed the engine.

Q. Talk slowly.

A. I got four bells, stop and back, and I reversed her without letting the steam off at all; and it was not six seconds from the time he hollered "Man was overboard" until she was backing.

Q. What does four bells indicate?

A. One to slow, one to stop and two to back.

Q. Four bells altogether means full speed astern?

A. That is when she is going full speed, that backs her.

Q. She was going full speed at the time?

A. Yes, sir.

Q. You say there was no delay between the time you heard Mr. Dugall sing out and the time you whistled up to the pilot-house?

A. No, sir, I had nothing more to do than to reach for the speaking tube like that (showing) and whistle, and he answered right away, and then as he

(Testimony of David Granger.)

answered with the bells—he did not answer me at all—I just hollered “Watchman overboard,” and then I got the bells.

Cross-examination.

Q. (Mr. BYERS.) Will you indicate on that chair the speed of the bells, to the jury, or with your foot, anyway?

A. Well, if I had anything to tap with. (Here witness illustrates.) You get the bells like that. (Here witness gives two separate double taps.)

Q. That is all you know about the case—you stuck right to your engine?

A. That is all I know about the case.

(Testimony of witness closed.)

W. S. JOHNSON, produced as a witness in behalf of defendant, being first duly sworn, testifies as follows:

Q. (Mr. BRONSON.) State your name.

A. Walter S. Johnson.

Q. Were you aboard the “Lydia Thompson” on the early morning of November 3d, 1904?

A. Yes, sir.

Q. In what capacity? A. Purser.

Q. Did you hear any disturbance taking place that morning?

(Testimony of W. S. Johnson.)

A. Yes, sir; that morning I went to sleep after I collected my fares and I heard a commotion on deck and I heard some one sing out "Man overboard," and of course I got up.

Q. What did you do? A. Why—

Q. Did you wait to dress?

A. No, sir, I jumped out of bed in my night-clothes and opened the door and stepped out to the railing and waited to see what the result was—waited to see what the boat was going to do.

Q. What was the vessel doing at that time?

A. At that time she was backing up.

Q. What was the condition of the weather as to lightness or darkness?

A. Well, it was stormy—it was stormy when I went to bed—it was storming in Bellingham Bay and, of course, it was storming some then at the time.

Q. Was it light or dark? A. Dark.

Q. How far could you see from the vessel, Mr. Johnson? A. Do you mean—

Q. How far on the water could you see to distinguish objects?

A. Well, without lights you could see but a very short distance. I do not suppose you could see ten feet from the guard, that is to distinguish any object. Of course you could see the outlines of the mountain tops.

(Testimony of W. S. Johnson.)

Q. Did you see the proceedings taken towards lowering the boat?

A. Yes, sir, that is, after it was swung out.

Q. Was there any hitch in getting the boat down?

A. No, sir.

Q. Did either end stick in the chucks or falls?

A. No, sir, both ends came down together on an even keel.

Q. Was there any delay or unnecessary hitch in it? A. No, sir.

Q. Do you know what the modern appliances are as to falls and hooks and so forth?

A. Yes, sir.

Q. What were they on this boat in that respect?

A. Do you mean just exactly—

Q. Were they modern appliances?

A. Yes, sir, they were modern, they passed inspection.

Q. Did you see the watchman in the water after this time? A. No, sir.

Q. Or at any time? A. No, sir.

Q. Do you remember anybody singing out "Here he is" down near the stern of the vessel?

A. Yes, sir, there were several cries of that kind. I could not tell who they were because they were down the gangway.

Q. Did you see anything drifting by the vessel?

(Testimony of W. S. Johnson.)

A. I saw a chunk of wood.

Q. At the time those cries were made at the stern of the vessel did you see anything drifting by?

A. Prior to the cries I saw a chunk of wood.

Q. About what size?

A. I should judge between four and five foot long, about half the size of well—about twelve inches across—wood.

Q. Would it be possible for you to have mistaken that to be a man's body? A. No, sir.

Q. Did you hear the master call out to the mate or to anyone at any time to let the man go to hell or anything of that kind?

A. No, sir, I did not—I did not hear any remark of that kind.

Q. Anything of that similar character?

A. No, sir, I did not hear anything of that kind on that night at all.

Q. Would you have heard it if the captain had called out any such remark as that after or about the time of the boat's coming back?

A. If he sung it out loud enough for them to hear it aboard the little boat I think that I would have heard it, because they were equally as far from the captain at the time as I was from him on the steamer.

(Testimony of W. S. Johnson.)

Q. Did you make any examination of the fastenings of this port after the accident occurred?

A. Well, I cannot say that I did just then.

Q. At any time, the next day?

A. I went down there and found everything in good condition,

Q. Did you see any clamps missing that held the lower port? A. No, sir.

Q. Did you observe the condition of Mr. Grover when he came aboard the boat that night?

A. I went around to collect his fare and I noticed that he had been drinking.

Q. What called it to your attention?

A. Why, the smell of liquor on his breath.

Q. Was there anything else which made you notice it?

A. Why, he was talking somewhat louder than necessary, like a man usually does when he is under the influence of liquor.

Q. Was he what you would call drunk or slightly intoxicated or what was his condition?

A. Well, I would say he was partly intoxicated.

Q. Do you know with whom he came down to the boat?

A. He came down with the man that runs the saloon up there on Elk Street, everybody around the

(Testimony of W. S. Johnson.)

dock calls him Mat, and some woman—there was two of them.

Q. What time was this—two o'clock?

A. No, sir, it was some time before we sailed.

Q. You have been familiar with boat drills and getting boats in the water, Mr. Johnson?

A. Yes, sir.

Q. Are you familiar with the usual time it takes to get a small boat into the water? A. Yes, sir.

Q. About what was the average time?

A. Well, from two to three minutes, in lowering a boat in the daytime.

Q. Well, with the men at their stations?

A. Yes, sir.

Q. Do you know about how long it took to get the boat in the water this time?

A. At this particular time, I should judge, about five minutes, or something like that.

Cross-examination.

Q. (Mr. BYERS.) You dressed yourself that night, did you?

A. Why, no, sir, I did not when I first came out.

Q. You came out?

A. Yes, sir, I came out.

Q. And that was the entire services you performed, wasn't it? A. Yes, sir.

(Testimony of W. S. Johnson.)

Q. You opened the door, I presume, and you saw that Mr. Grover was talking about there rather loudly—now what did he say?

A. I didn't stop to listen.

Q. Some of the other passengers were talking around very loudly after this man was left there in the water—some of the other passengers talked loudly besides Mr. Grover.

A. After they left the spot where the deceased was?

Q. Yes.

Mr. BRONSON.—I did not ask the witness anything that was said after that time. I asked what Grover said when he came down to the boat and what his condition was and I object to this as not proper cross-examination.

The COURT.—Objection sustained.

Q. (Mr. BYERS.) Did you in your direct examination, were you speaking of the time that Mr. Grover first came down to the boat or at the time the accident occurred that he was talking loudly?

A. When he came down to the boat.

Q. You did not speak about the time of the accident then? A. No, sir.

Q. You say it takes two or three minutes to lower a boat in daylight?

(Testimony of W. S. Johnson.)

A. Yes, sir, that is when all the men are on deck.

Q. Don't you know as a matter of fact that in the test the boats of that size they lower a boat in about a minute and a half to two minutes?

A. They can do it, yes, sir.

Q. And longer than five minutes at night would be an unreasonable length of time, wouldn't it?

A. Well, provided you wanted to get them in—if they wanted to get them in as quick as they could.

Q. I say, if they wanted to get them in as quick as they could?

A. Yes.

Q. That is, if they wanted to get it in sooner.

A. If they wanted to get the boat in in less than five minutes they could do so, but unless it is necessary they don't usually do it.

Q. Did you hear what the captain said when he called to the men in the boat?

A. At what time?

Q. When they were out the second time—to the men in the small boat—did you hear him call to them at all?

A. I knew he was giving orders to them, but I could not state just exactly what he said.

Q. Do you know the substance of what he said?

A. Well, I heard him give orders what to do to search for him.

(Testimony of W. S. Johnson.)

Q. Did you hear him tell them to bring in the port?

A. No, sir; I didn't hear him say that.

Q. This port that went out was right in the vicinity of this log of wood which you saw?

A. I could not say—did not see the port until after it was brought in.

Q. This log of wood was turned up somewhat about the length of a man?

A. No, sir; not as long as a man.

Q. The way an expert swimmer swims, is to float on his back as long as he can sustain himself?

A. That depends on the swimmer.

Q. Did you say you examined that port the next day, in your direct examination?

A. I made no rigid examination of it. I went down and glanced over the port and saw that everything was all right as far as I could see. It was not my place to do so and, of course, I went down there and just looked at it through curiosity and seeing everything was all right.

Q. Did you notice whether it was tied with ropes or not the next day?

A. I could not say whether it was tied with ropes or not; as I said, I made no rigid examination of the port.

(Testimony of W. S. Johnson.)

Q. Did you have any controversy or quarrel with Mr. Grover? A. Any controversy or quarrel?

Q. Yes, about this matter?

A. No, I could not say that I had any quarrel with him.

Q. Well, did you have any words?

A. Well, I had no words, I only spoke to him about it.

Q. Were those words pleasant or controversial?

A. They were rather warm the way he accused the crew, and being a member of the crew, he said I didn't use the right caution.

Mr. BRONSON.—I object to this as not proper cross-examination.

(Objection overruled. Exception noted for defendants.)

A. That is about all there was. I told him I thought the crew had done their duty and he said he didn't think they had. Of course, that was just a matter of opinion.

Q. That was the next day, wasn't it?

A. I believe it was the next trip.

Redirect Examination.

Q. (Mr. BRONSON.) Mr. Grover had expressed considerable ill-will towards the owners of the boat, hadn't he?

(Testimony of W. S. Johnson.)

(Objected to as leading.)

Q. Had you ever had any conversation with this man Grover about any of his business relations with the boat?

A. Yes, he had business relations with the boat to the extent of shipping some freight.

Q. What had been the result; did he express friendly or unfriendly feeling toward the company?

A. Well, it was rather unfriendly.

Q. Had he made remarks or threats which you know of—state what he said, or substantially what he said.

The COURT.—I do not think you have the right to go into the details of what was said as to any controversy or quarrel. The general fact of hostility may be shown and that is as far as you can go.

(Testimony of witness closed.)

ALBERT THORNTON, produced as a witness in behalf of defendant, being first duly sworn, testified as follows:

Q. (Mr. BRONSON.) Were you on the steamer "Lydia Thompson" on the morning of November 3d, 1904? A. I was.

Q. What capacity? A. Chief engineer.

Q. Were you on watch when the disturbance arose and the alarm of the man overboard?

(Testimony of Albert Thornton.)

A. No, sir.

Q. Where were you? A. In bed.

Q. What did you hear first?

A. The assistant came and called me.

Q. Where is your room?

A. My room is about twenty feet aft of where they handle the engine.

Q. About twenty feet? A. Yes, sir.

Q. Which way were the engines working when you were called out?

A. They were backing when I came out.

Q. Did you dress yourself? A. No, sir.

Q. Where did you go?

A. I came out to the engine-room until the engines were reversed and going ahead again and then I went on deck.

Q. Did you hear the captain call out to the mate or to anybody else to let the man go to hell and to bring the port back, or anything like that?

A. No, sir.

Q. Or anything of a similar character?

A. No, sir.

Q. Did you hear him express any indifference as to the fate of the man? A. No, sir.

Q. What was the condition of the weather?

A. It was very dark.

Q. Could you see any distance from the vessel?

(Testimony of Robert Thornton.)

A. No, sir.

Cross-examination.

Q. (Mr. BYERS.) Did you hear him tell the men in the boat to bring the port back?

A. No, sir.

Q. Did you hear him say that or anything about it?

A. No, sir.

Q. Did you hear the captain, as a matter of fact, give any orders or any directions that night?

A. Not any orders, no, sir.

Q. (Mr. BRONSON.) You stayed by the engines until they were going forward?

A. Yes, sir.

(Testimony of witness closed.)

FRED BLAKE, produced as a witness in behalf of defendants, being first duly sworn, testifies as follows:

Q. (Mr. BRONSON.) What is your business?

A. Well, all kinds of occupations.

Q. Well, where are you employed now?

A. I am employed on a ranch on Orcas Island.

Q. Were you on board the "Lydia Thompson" on the morning of November 3d, 1904?

A. I was.

Q. In what capacity?

A. As stevedore.

Q. Did you see the boat lowered into the water?

(Testimony of Fred Blake.)

A. I did.

Q. Was there any delay or hitch in getting the boat down? A. No, sir.

Q. Did she stick at either end? A. No, sir.

Mr. BYERS.—I object to that as leading.

The COURT.—I will allow you to put leading questions where you are contradicting the testimony on the other side but do not carry it beyond that; if you want to make a specific contradiction you can do it by a leading question—the question as to it sticking at either end is a proper question.

Q. (Mr. BRONSON.) How did the falls work?

A. Very nicely.

Q. Were you in the boat? A. No, sir.

Cross-examination.

Q. (Mr. BYERS.) Where were you?

A. I was on the upper deck.

Q. What were you doing?

A. Helping lower the boat.

Q. Who did you assist on the upper deck?

A. I helped to clear away the falls.

Q. You helped to clear away the falls?

A. Yes, sir.

Q. The men lower the boat from the boat itself, don't they? A. No, sir.

(Testimony of Fred Blake.)

Q. How is it done, tell the jury.

A. The crew always lowers the boat from the upper deck.

Q. They get the boat right off? A. Yes, sir.

Q. The front tackle and the hind tackle did not hitch? A. No, sir.

Q. It swung right out? A. Yes, sir.

Q. How long did it take them?

A. I could not say the exact time.

Q. What were you doing all this time?

A. Which time?

Q. Well, the time the boat was lowering, what were you doing, what things were you doing, what did you do?

A. Well, I was assisting in all parts of it.

Q. Well, what did you do—what things did you do?

A. Well I cut the lashings for one side, for one thing; I cleared away the canvas and took the covering off.

Q. What else did you do?

A. I slacked away on one of the falls and I helped hoist the boat to get it clear to swing it in the davits.

Q. How long had you been employed on that boat? A. That was my first trip on her.

Q. How many boats had you ever lowered before from the davits before that one?

(Testimony of Norman Blake.)

A. About three.

Q. And that was your exclusive experience, was it—that was all the experience you ever had?

A. Yes, sir.

Q. In that line? A. Yes, sir.

(Testimony of witness closed.)

NORMAN BLAKE, produced as a witness, in behalf of defendants, being first duly sworn, testifies as follows:

Q. (Mr. BRONSON.) Were you on the "Lydia Thompson" the morning of November 3d, 1904?

A. Yes, sir.

Q. What were you doing there?

A. I was a deck-hand.

Q. Do you know anything about the boat that was lowered?

A. It went off all right it seemed to me.

(Motion to strike as not responsive.)

Q. Where were you when the boat was lowered?

A. I was in the boat.

Q. You were one of the men in the boat?

A. Yes, sir.

Q. Was there any trouble in getting the boat off?

A. No, sir.

Q. Did she stick on either end? A. No, sir.

Q. How did the falls work?

(Testimony of Norman Blake.)

A. They worked all right.

Q. How did the blocks work?

A. They worked good.

Q. What, if any, delay was there in getting her off?

A. There was no delay.

Cross-examination.

Q. (Mr. BYERS.) How many boats had you ever lowered before that one?

A. I never lowered any.

Q. That is the first one that you were ever in that was lowered?

A. Yes, sir.

Q. Do you know how long it took?

A. Well, to just lower the boat?

Q. How long did it take to get the boat into the water?

A. From the time—

Q. From the time the man fell overboard.

A. Probably five minutes.

Q. How long did it take to get it down from the time you started on the lowering of the boat?

A. Half a minute perhaps.

Q. Did you hear the men on deck telling you that the drowning man was floating right beside you?

A. No, sir.

Q. You did not hear him saying anything about that?

A. No, sir.

(Testimony of Norman Blake.)

Q. Was there anybody shouting that there was the man? A. No, sir.

Q. You did not hear that—where were you sleeping?

A. I was sleeping below in the forecastle.

Q. What are the falls?

A. The ropes in the blocks that lowers the boat away.

Q. What are the blocks—describe to the jury what the blocks are.

A. The blocks are what the ropes run through.

Q. Which ones?

A. The ropes that lower the boat away, they run through the blocks.

Q. Did you hear the captain tell you to bring the port in? A. No, sir.

Q. Did you hear him say anything about that?

A. No, sir.

Q. Did you hear the captain or mate or Mr. Stanley testify this morning that the captain had shouted to them to bring the port in?

A. No, sir.

Q. You did not hear him testify that?

A. No, sir.

Q. You did not hear that at any rate?

A. No, sir.

(Testimony of Norman Blake.)

Q. How many other of the crew was it that that was the first trip of?

(Objected to and objection sustained.)

Q. (Mr. BRONSON.) Who was in the boat with you? A. The mate.

Q. Did you hear the captain call out to you or the mate or anybody else to let the man go to hell, or anything like that? A. No, sir.

Q. You did not hear anything of that kind at all?

A. No, sir.

(Testimony of witness closed.)

Mr. BRONSON.—I would like to offer in evidence Exhibit No. 1 for identification.

Mr. BYERS.—I object to it as irrelevant, immaterial, incompetent and it does not prove or tend to prove any issue in this action or anything else.

Mr. BRONSON.—Of course, it is more or less cumulative in its character.

The COURT.—I will sustain the objection on the ground that it is immaterial.

(Exception noted for defendants.)

Here the defendants rest.

R. H. HOHL, recalled in behalf of plaintiff in rebuttal, testifies as follows:

Q. (Mr. BYERS.) Did you hear the captain shout to the mate and stevedore when they were out on the boat?

A. I heard him shout to the boat, yes, sir.

Mr. BRONSON.—I object to this as not proper rebuttal testimony.

Mr. BYERS.—I asked the captain, I laid the foundation for impeaching him by asking the captain and I quoted the language and the time and place and the circumstances and I wish to impeach that testimony of his.

Mr. BRONSON.—I submit it is not proper rebuttal. That is not the proper way to impeach.

The COURT.—The matter which you cross-examined the captain about was part of the *res gestae* and it was in regard to a matter which you opened up in your case in chief and one of your other witnesses spoke about it and I will sustain the objection on the ground that this is not a matter for rebuttal.

Mr. BYERS.—We desire, in order to keep the record straight—we will make the same offer to impeach that testimony with Mr. Dahl and Mr. Grover.

The COURT.—I will make the same ruling and you can have an exception.

E. J. GROVER, recalled in rebuttal in behalf of plaintiff, testifies as follows:

Q. (Mr. BYERS.) Mr. Grover, explain what, if any, trouble you ever had with the steamboat company.

Mr. BRONSON.—I object to that; the counsel brought it out in his cross-examination; the controversy between Mr. Grover and the purser, and I cross-examined him, or rather I referred to it in the redirect examination, but I do not think it is proper rebuttal.

The COURT.—The great danger is that we get switched off in trying a case we started out to try in investigating some other controversy. You are asking him to give the details of a matter so that the jury may judge of the merits of the quarrel, whether he is to blame or somebody else is more to blame and this jury don't need to be bothered with the details. The question is whether he has any feeling of animosity towards this company or its officers, and that is as far as you can go.

Q. (Mr. BYERS.) Then explain, Mr. Grover, whether or not you have had dealings with this company by which you have or had any animosity towards them.

A. No, sir, I have not had any feeling—they straightened up the matter with me.

(Testimony of witness closed.)

Whereupon the testimony is closed, and further proceedings are adjourned until June 29, 1906, at ten o'clock A. M.

Upon the close of all the evidence in the case the defendant Puget Sound Navigation Company moved the Court to instruct the jury to bring in a verdict for the said defendant, and in case the Court refused to so instruct, requested other instructions of the Court as follows, to wit:

Instructions Requested by Defendant.

The defendant requests the Court to instruct the jury in this case as follows, to wit:

1. To bring in a verdict for the defendant Puget Sound Navigation Company.

In case the Court refuses its instruction No. 1 as requested above; not waiving the same, the defendant requests the Court to instruct the jury as follows:

2. That the burden of proof in this case rests upon the plaintiff to prove by a fair preponderance of the evidence all of the material allegations of her complaint.

3. That an employer is only bound to use ordinary and reasonable care in affording the employee a safe place and safe appliances with which to work, and is not bound to furnish the very best or latest or most improved appliances if they are not ordinarily or generally used.

4. That R. O. Lavender assumed as a matter of

law, all of the ordinary risks and dangers dependent upon his duties as a watchman on board the steamer "Lydia Thompson," and that no recovery can be had in this case if he came to his death by reason of such ordinary dangers unless the same was caused approximately by the carelessness or negligence of the defendant or the officers of the steamer "Lydia Thompson."

5. The jury are instructed that if it appears from the evidence in this case that said R. O. Lavender came to his death "as the result of either mere accident or of negligence on the part of the defendant no recovery can be had, as in such case there would not be a preponderance of proof showing negligence on the part of the company. Negligence will not be presumed, but must be proved as alleged and is not made out merely by showing a state of facts which tend equally to prove negligence or mere accident."

Mitchell vs. Tacoma Railway Co., 9 Wash. 120, at 130.

6. The jury are instructed that the fact "of accident carries with it no presumption of negligence on the part of the employer; and it is an affirmative fact with injured employee" (or for the representatives of a deceased employee) "to establish that the employer has been guilty of negligence. And that in the latter case it is not sufficient for the employee to show that the employer may have been guilty of

negligence; the evidence must point to the fact that he was."

Patent vs. Texas R. R., 179 U. S. 658 (45 Law Ed. 364).

7. "The jury are instructed that where the testimony leaves the matter uncertain and shows that any one (or several) things brought about the (death) in question for some of which the employer is responsible and for some of which it is not, it is not for the jury to guess between these (different) causes and find that the negligence of the employer was the real cause when (or if) there is not satisfactory foundation in the testimony for that conclusion."

Patent vs. Texas R. R., 179 U. S. 658 (45 Law Ed. 364).

8. The jury are instructed that if the deceased R O. Lavender was guilty of negligence in going about his duties upon the steamer "Lydia Thompson," which negligence materially contributed to his death, that no recovery can be had in this case.

9. The jury are further instructed that while an employee has a right to suppose and rely upon the exercise of reasonable and ordinary care by his employer and use of reasonable and ordinary appliances in reasonable and ordinary places, yet the employee has no right to rely upon such reasonable and ordinary care if he does know, or has reason to know, that the same has not been exercised. "The em-

ployer has the right to suppose that the employee will be alert and observe that diligence to detect and avoid dangers which a man of ordinary prudence would exercise for self-preservation under like conditions.”

“Men when they are working around dangerous machinery (or in dangerous places) must notice. Their faculties and senses are given them for the purpose of self-preservation and they must exercise them to a reasonable extent.”

Smith vs. Maine Company, 38 Wash., at page 460.

10. The jury are instructed that an employee is charged as a matter of law with the knowledge of the condition of appliances which he is employed to handle and of the defects, if any, thereof, so far as he would have ascertained the same by the exercise of reasonable care and diligence in this behalf.

Smith vs. Mining Co., 38 Wash., at 467.

11. The jury are instructed that they cannot find for the plaintiff in this case unless they find, among other things, as before instructed by the Court, that the said R. O. Lavender came to his death by reason of a defective condition of the port (if such defective condition is found to be the cause of his death) and being a port which he was instructed to remove, and of which defective condition he was ignorant and would not by the exercise of reasonable care have

discovered, and which defective condition had existed long enough prior to the accident for the defendant to have had an opportunity to know of the same and to have repaired it.

12. The jury are instructed that there can be no recovery in this case if the said R. O. Lavender, in the course of his employment, and as a part of his duties, had equal, or better opportunities with the defendant to observe any dangerous condition, which may have subsequently resulted in his death and failed, by the exercise of reasonable and ordinary care, to observe the same.

The Court declined to instruct the jury to bring in a verdict for the defendant or to instruct the jury except as follows, to wit:

June 29, 1906.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

(After the cause has been argued to the jury by counsel for the plaintiff and defendants, the Court gives the following instructions to the jury.)

Instructions by the Court to the Jury.

The COURT.—Gentlemen of the jury: The plaintiff in this action is Mary R. Lavender, the widow of R. O. Lavender, deceased; the defendants are the Puget Sound Navigation Company of Oregon, a corporation, owner of the steamship “Lydia Thomp-

son," and Captain Barlo, master of the steamer, and Mr. Stanley, who at the time of the accident was the acting pilot and mate of the steamer "Lydia Thompson"—three defendants. The plaintiff bases her claim in this case, her right of action, upon the injury she claims to have sustained by reason of the wrongful act of the defendants in causing the death of her husband; the death of R. O. Lavender by the wrong on the part of the defendants is the basis of the action. I speak of this in this way so as to direct your minds to the foundation of the legal liability which is asserted and which must be proved in order to entitle the plaintiff to a verdict in any sum of damages. Every action at law, to be valid, must have a basis in the law of the land. Some rights of action are to compel the performance of obligations created by contracts in which a promise made and broken resulting in loss is made the basis of the claim to be enforced in an action at law. Other rights of action are based upon wrongs committed by one party causing injury to the other, and there may be special rights of action founded upon some positive provision of the law. Now, in the classification of legal actions this is what is termed an action upon a tort, where the basis of the action is an alleged wrong causing injury. A more specific term indicating what is claimed, is the word negligence—the wrong complained of is the neglect on the part of the de-

defendants to discharge a duty which they owed by reason of the relationship existing at the time to the deceased R. O. Lavender, and the particular neglect is specified in this complaint. Now this is what the plaintiff has undertaken to prove in this case; that on the 3d day of November, 1904, R. O. Lavender was employed upon the said vessel, that is the "Lydia Thomson," in the capacity of watchman; that as the said steamer was proceeding on its trip from Bellingham, Washington, to Seattle, Washington, on or about four o'clock in the morning of said day, said R. O. Lavender was ordered and directed by the said defendant Charles Stanley to open the port on the port side of said vessel preparatory to making the landing at the wharf at Olga; that the port of said vessel was so defectively and dangerously constructed and in such poor repair that it was dangerous for one man to open the same, and that the said defects were known to the said defendant the Puget Sound Navigation Company of Oregon, or by ordinary care should have been known to the said defendant and were unknown to the said R. O. Lavender, and that when said R. O. Lavender attempted to open said port he slipped through the said opening and fell into the water and was drowned; that after said R. O. Lavender fell into the water said defendant Charles Stanley instead of giving an alarm and immediately having a boat lowered to attempt to rescue the said

Lavender, merely notified some one to go and call the captain, and thereafter a boat was lowered and that the said Lavender called for help and could have been rescued if proper efforts had been made, and that the space of ten minutes and more elapsed before any boat was finally lowered to attempt the said rescue; that the said steamer "Lydia Thompson" was not properly and sufficiently manned and there was no lookout upon the said steamer to give an alarm in case of accident, and there was no alarm given, and the death of the said Lavender was caused on account of the said negligence as above set forth of the said defendant Puget Sound Navigation Company in not having said steamer properly manned, and in allowing the said port to be and remain in such defective and dangerous condition, and in failing to notify the said Lavender that it was dangerous for one man to open the same, and in failing to make suitable and proper efforts to effect the rescue of the said Lavender, or such efforts as could have been made if such steamer had been properly manned and equipped.

Now, you will observe that, as stated here, the relationship of the parties was that of employer and employee and agents in the management of the steamer; Mr. Lavender was the employee in the capacity of watchman on board the boat; the captain was there as master of the boat. Mr. Stanley was

there as pilot and mate and in charge of the deck at the time of the accident. The corporation was the owner of and operating the boat and the employer of both the captain and the mate and the watchman. It is assumed, and it is the law, that there was a duty on the part of the owner of the vessel to provide such means and appliances and appointments and equipments about the vessel that it could be safely managed and operated in its business so as not to unnecessarily expose the employees to danger or injury or death, and it is assumed that it was the duty of the officers of the boat when the watchman fell overboard to make such efforts as were possible to effect his rescue, and that to neglect to make such efforts as were possible under the conditions existing there to save him, was a breach of duty which they owed towards him. I instruct you that under the law it was their duty to attempt to rescue and do the best they could promptly in view of all the circumstances, considering the darkness and everything, that appears in the testimony about the case, that men of ordinary intelligence and prudence would have been able to do, to save the life of the man after he fell in the water.

Now, a neglect to perform the duty is specified here in three particulars. First, it is charged that the port opening in the side of the vessel was improp-

erly constructed so as to render it unnecessarily dangerous, and,

Second, that the vessel was not sufficiently manned; that she did not have the crew and the officers and the number of employees in their proper stations necessary to meet the requirements of the law and to navigate the boat in safety, and

Third, that after Mr. Lavender fell in the water there was a failure to make such efforts as should have been made to effect his rescue.

By making these charges the plaintiff has necessarily resting upon her the burden of establishing by affirmative evidence that in one or more of all of the particulars specified the defendants were guilty of negligence. She does not necessarily have to prove all of them. She is required to at least prove one; and in addition to that she is required to prove by the preponderance of the evidence that the negligence complained of was the cause of Mr. Lavender's death directly or necessarily causing his death and that it was the proximate cause of his death. It is undoubtedly true in this case that Mr. Lavender met his death at the time specified in the complaint by drowning. He was drowned because he fell in the water. The question in the case is what caused him to fall in the water. Was it the negligence of the defendant in either of the particulars specified or was it some other cause? You are not

authorized to render a verdict against the defendants, or either of them, upon any probability that it might have been the negligence. The evidence must be sufficient for you to be able to find that by the preponderance of the evidence it is proven that the negligence was the cause; not that it might have been merely, but it was the cause. That is a matter that jurors are not allowed to speculate about or render a verdict upon a mere theory that it is as probable it was that way as any other way, or that, in conjunction with other causes, negligence may have been part of the combination of circumstances that effected the death. That won't do. The jurors must be able to find from the evidence that the negligence was the cause. A corporation can act only through its agents and representatives and it is responsible for doing the things which the law imposes as a positive obligation upon an employer or a manager of vessels employed in the transportation of passengers or freight, so that you do not have to inquire particularly to ascertain whose particular negligence it was if there was a defect in the construction of the port through which Mr. Lavender fell into the water. If there was any negligence in that respect, if there was a dangerous condition existing there, the defendant corporation was responsible for it, no matter who was the particular person that may have been especially responsible.

A JUROR.—May I interrupt the Court, please?

The COURT.—No.

The JUROR.—In case there was a defect in that gate or in the way they are supported, could that be considered—would that be considered sufficient under the statement you are just making for a verdict?

The COURT.—Well, I will try to make that plain. The defect specified in the complaint is a defect of construction; that it was badly constructed or out of repair. Now, if that existed, and the jury finds from the evidence that that was the cause of the accident of Mr. Lavender falling in the water, that would be sufficient to base a verdict upon in favor of the plaintiff. But I want you to note what I am about to say in regard to the difference in the legal responsibility of a carrier of passengers and freight towards passengers and toward employees. The owner of a vessel operated in carrying passengers is held to a high degree of care for the safety of passengers. The duty which it owes to its employees employed about the business of transporting passengers is different in degree. The duty to employees is to exercise that degree of care for the safety of the employees that a person of ordinary intelligence and caution usually does exercise for his own safety. The degree of ordinary care and the degree of extraordinary care is recognized in the law. Towards a passenger the con-

tract obligation of the carrier is to secure for safety every means tending to promote safety that skill and knowledge on the subject render possible. Towards employees the degree of ordinary care is the rule. Now, if the port itself, the gate or door and the sides and casing and fastening were all in good condition, but the unsafe condition was due to the negligence of employees on the boat in not properly securing the fastening, that would come under a different rule—that would be negligence of a fellow-servant of the deceased, for which the employer is not liable. It is the duty of the employer to provide the appliances and equipments in a safe condition, to inspect them and keep them in good repair so they can be used with safety, but if things that are good and kept in good repair are not used properly by the employees in the operation of the business, that is a kind of negligence for which the employer is not directly responsible to an employee, or the representatives of an employee, who may be injured. If a window or an opening in a building or a vessel is made as good as it can be, and it is properly looked after and kept in good condition until somebody falls out of it because of the carelessness of some one leaving it open or insecurely fastened, and that person is a co-employee in the service in which the injured person at the time was employed, the common employer is not responsible to the injured person.

The jury is instructed that it is the law that all passenger and ferry steamers shall, in addition to the regular pilot and watchman, have one of the crew also on watch in or near the pilot-house, and this rule applies to all steamers navigating in the night-time.

The jury is further instructed that it is the law that all steamers navigating lakes, bays and sounds in the night-time shall have a watchman on each deck below the hurricane deck, including staterooms, such as are accessible to the passengers and crew when under way, and a watchman as lookout at the bow, excepting steamboats navigating the waters emptying into the Gulf of Mexico, having hurricane decks that terminate abaft the stem. Then the watchman, as lookout, shall be stationed on the front part of such hurricane deck, who shall perform no other duty between sunrise and sunset.

The jury is further instructed that it is the law that no steamer carrying passengers shall depart from any port unless she shall have in her service a full complement of licensed officers and a full crew, sufficient at all times to manage the vessel, including the proper number of watchmen. There is no evidence in the case tending to prove that the "Lydia Thompson" at the time complained of didn't have all of the licensed officers that the law requires. There is a question in the case for you to decide whether she had a watchman who was stationed near

the pilot-house and not required to perform any other duty than the duty of a watchman in that part of the vessel, and whether she had the number of watchmen that the law requires that a vessel in her employment should have.

If you find that there was not the required complement of watchmen or employees on the vessel, that failure would be one of the grounds of negligence alleged in this complaint, and the question whether the defendants or either of them is liable to this plaintiff because of that negligence depends on whether that was the cause, directly or approximately, of Mr. Lavender's death. You have to determine that from the consideration of all that appears in the testimony as to what really happened. Such acts of negligence are not the grounds of liability unless they are the cause of the injury complained of.

In regard to the efforts that were made for the rescue of Mr. Lavender after he fell into the water, the evidence is all one way that efforts were made, and it is for the jury to judge, in view of the circumstances, whether reasonable efforts were made—such efforts as could have been made and which would have rendered the rescue possible.

The Court instructs you that it is not necessary that the negligence of the defendant be proved by the direct evidence of eye-witnesses nor by proofs which would leave it beyond the possibility of a doubt. It

is sufficient if it be established by the proof of circumstances which lead reasonably to its inference and which ordinarily satisfies an ordinary mind of its truth. The plaintiff is not required to establish facts necessary to her recovery in the case by sufficient evidence to convince the jury beyond a reasonable doubt, but so far as she has the affirmative side of the case she must produce at least the fair preponderance of the evidence to sustain her affirmative allegations. I do not want you to be misled by the reference in the instruction I have read about the testimony of eye-witnesses. The jury must base their verdict upon competent and legal evidence. The direct testimony of eye-witnesses is referred to as contra-distinguished from proved facts and circumstances which may be equally convincing as the testimony of eye-witnesses—those who saw and heard the actual transaction, but the Court does not mean for you to infer that hearsay reports testified to by witnesses on the stand are to take the place of legal evidence. A witness who details to the jury a fact as a fact which he knows only because another person, when not under oath, has told it to him, does not give competent legal evidence. Under the law of the country facts that are put in issue have to be proved on the trial of a case in court by the sworn testimony of witnesses, and the law does not permit an evasion of that rule by allowing a person to make a statement of a fact which

he claims to know by reason of being told by some one else, when that some one else has not come into court and sworn to it, and that does not make it sworn evidence or competent evidence, and every statement of that kind detailed by a witness on the trial should be disregarded by the jury.

The burden of proof in this case rests upon the plaintiff to prove by the fair preponderance of the evidence all of the material allegations of her complaint.

An employer is only bound to use ordinary care in affording the employees a safe place and safe appliances with which to work, and is not bound to furnish the very best or latest or most improved appliances if they are not ordinarily or generally used.

The jury is instructed that if it appears from the evidence in this case that said R. O. Lavender came to his death as the result of either mere accident or of negligence on the part of the defendant, no recovery can be had, as in such case there would not be a preponderance of proof showing negligence on the part of the company. Negligence will not be presumed, but must be proved as alleged, and is not made out merely by showing a state of facts which tend equally to prove negligence or mere accident.

The jury are instructed that the fact of accident carries with it no presumption of negligence on the part of the employer; and it is an affirmative fact

which the injured employee, or the representatives of a deceased employee, is required to establish, that the employer has been guilty of negligence. And that in the latter case it is not sufficient for the employee to show that the employer may have been guilty of negligence; the evidence must point to the fact that he was.

The jury are instructed that where the testimony leaves a matter uncertain, and shows that any one of several things brought about the death in question, for some of which the employer is responsible and for some of which he is not, it is not for the jury to guess between these different causes and find that the negligence of the employer was the real cause when there is not satisfactory foundation in the testimony for that conclusion.

The jury are instructed that if the deceased R. O. Lavender was guilty of negligence in going about his duties upon the steamer "Lydia Thompson," which negligence materially contributed to his death, that no recovery can be had in this case.

The defendant relies as a special defense upon the claim that Mr. Lavender himself was guilty of contributory negligence. That part of the case has to be proved by the defendant by at least a fair preponderance of the evidence in order to make it available as a defense.

The jury are instructed that while an employee has a right to suppose and rely upon the exercise of reasonable and ordinary care by his employer and use of reasonable and ordinary appliances in reasonable and ordinary places, yet the employee has no right to rely upon such reasonable and ordinary care if he does know, or has reason to know, that the same has not been exercised. The employer has the right to suppose that the employee will be alert and observe that diligence to detect and avoid dangers which a man of ordinary prudence would exercise for self-preservation under like conditions. Men, when they are working around dangerous machinery or in dangerous places, must notice. Their faculties and senses are given them for the purpose of self-preservation, and they must exercise them to a reasonable extent.

The jury are instructed that an employee is charged as a matter of law with the knowledge of the condition of appliances which he is employed to handle and of the defects, if any thereof, so far as he would have ascertained the same by the exercise of reasonable care and diligence in this behalf.

Now, the employee is not required as the employer is, to frequently inspect and examine to find defects and to see that things are kept in repair. His obligation does not go that far. But he is required to

observe things that are obvious and visible to him in the course of his employment. He must see things which can be seen by a man who is attending to his duties and his surroundings.

The jury are instructed that they cannot find for the plaintiff in this case unless they find, among other things, as before instructed by the Court, that the said R. O. Lavender came to his death by reason of a defective condition of the port, if such defective condition is found to be the cause of his death, and being a port which he was instructed to remove, and of which defective condition he was ignorant and would not, by the exercise of reasonable care, have discovered, and which defective condition had existed long enough prior to the accident for the defendant to have had an opportunity to know the same and to have repaired it.

The jury are instructed that there can be no recovery in this case if the said R. O. Lavender, in the course of his employment, and as a part of his duties, had equal, or better, opportunities with the defendant to observe any dangerous condition which may have subsequently resulted in his death, and failed, by the exercise of reasonable and ordinary care, to observe the same.

The jury are the judges of every question of fact in the case, and it is for you to pass upon the credibility of the witnesses and the weight and value of all

the testimony in the case, and endeavor to reach a just conclusion, having regard to the rules which I have stated as to the preponderance of evidence.

If your verdict is in favor of the plaintiff, it will be your duty then to assess the damages, and that requires the jury to agree in finding some particular amount of money which, in your judgment, is fair and reasonable compensation for the plaintiff to receive in view of the death of her husband—as compensation for her loss in his death, taking into account the pecuniary loss to her of support and the advantage to her of the comfort and society of her husband if he had continued to survive. According to the testimony, uncontradicted, Mr. Lavender, at the time of his death, was fifty-six years of age, and he had an expectancy of 16.72 years, that is, according to the average duration of human life he had that expectancy of continuance of life; that is one of the circumstances which a jury have a right to have in mind in determining the amount of damages to award for the death of a person. You are not obliged to find the annual value of a man's life and add it together. It is impossible to even approach to an exact comparison of a human life with money. All that can be expected is that twelve men, in the exercise of good sense, will endeavor to agree upon some amount which will be an approximation towards a fair compensation.

The Court submits to you three forms of verdict, one of which will be appropriate in case you find against the plaintiff in favor of all the defendants. The other is appropriate in case you find against all of the defendants that they are jointly liable, in which you will add the amount of money which you award as damages to be assessed against all of them. The third is a form which you may use in case you find some of the defendants not liable and others to be liable. You will insert the name of the defendant against which your verdict is made, and of the other in which you find the defendant not liable.

You are requested also in addition to your general verdict, in case you find in favor of the plaintiff, to answer certain interrogatories which are submitted to you—two interrogatories which I will submit to you to be answered—of course you do not have to answer those unless your verdict is in favor of the plaintiff. The jury may now retire.

Whereupon the defendant excepted to the refusal of the Court to grant upon defendant's motion for a peremptory instruction, and further excepted to the instructions and to the refusal to instruct as follows, to wit:

Defendant's Exceptions to the Instructions to the Jury.

Mr. BRONSON.—The defendant excepts to the refusal of the Court to grant defendant's motion for

a peremptory instruction to the jury to return a verdict in favor of the defendant.

Defendant excepts to the refusal of the Court to give the third instruction requested by the defendant, and which reads:

“That an employer is only bound to use ordinary and reasonable care in affording the employee a safe place and safe appliances with which to work, and is not bound to furnish the very best or latest or most approved appliances if they are not ordinarily or generally used.”

The defendant desires to except to the instruction of the Court in the fore part of the Court's instructions to the effect that it was the duty of the defendant to operate the boat so as not to expose the employees to danger of injury or death, upon the ground that that instruction would practically make the defendant an insurer, in the absence of a limitation.

The defendant excepts to the instruction where the Court said that it was the duty of the defendant to make such efforts as were possible to make the rescue, on the ground that the duty of the defendant is simply that of making all reasonable efforts.

The defendant excepts to the instruction of the Court in the language that the plaintiff in this case is required to prove at least one of the three conditions which the Court enumerated, from which the

jury might infer that the proof of any one of those three conditions would justify a verdict.

The COURT.—I do not believe that that would be an inference—I think I stated that positively.

Mr. BRONSON.—The defendant desires to except to the instruction of the Court to the jury that as a matter of law or fact Mr. Lavender met his death from drowning, on the ground that there is no evidence of his death positively.

And defendant excepts to the instruction which the Court gave in connection with the inquiry of the juror, to the effect that if there was a defect in its construction that would be sufficient evidence of negligence of the defendant—I haven't got your Honor's exact words there.

And defendant excepts to the instruction which the Court gave relative to the watchman and the failure, if any, of the vessel to have a watchman, or about keeping a watchman upon the deck, in so far as the jury might infer that the sending away of this particular watchman from his duties might have resulted in his death, if such an inference could be drawn.

And defendant excepts to the instruction of the Court that the employee is not required to frequently inspect the place or appliances with which he is employed and about which he is employed, as it is the duty of the employer, on the ground that it

is just as much the duty and obligation of the employee to advise himself as it is the duty of the defendant to keep the place in repair.

(Which exceptions are by the Court allowed.)

Whereupon the defendant Puget Sound Navigation Company requested that the following interrogatories be propounded to the jury and which interrogatories were subsequently answered by the jury as in answers one and two following:

Interrogatory 1. If the jury return a verdict in favor of the plaintiff in this cause, the jury is requested to state whether or not the defendant had any reason to apprehend the death of said R. O. Lavender through any act on the part of the defendant.

Answer 1. No.

Interrogatory 2. If the jury return a verdict in favor of the plaintiff, the defendant requests that the jury state the specific acts of negligence on the part of the defendant which was the proximate cause of the death of said R. O. Lavender.

Answer 2. Defective port and ship not properly manned.

Whereupon, the jury retired to consider their verdict, and returned into Court the following verdict:

Verdict.

We, the jury in the above-entitled cause, find for the plaintiff, and against the defendant Puget Sound

Navigation Company of Oregon and assess her damages at the sum of fifty-five hundred dollars (\$5500.00). We further find in favor of the defendants Charles Stanley and Samuel Barlow.

R. H. DENNY,
Foreman.

The defendant afterwards, to wit, on the 20th day of July, 1906, moved and petitioned the Court to set aside said verdict and grant a new trial, which motion and petition was as follows, to wit:

Motion for New Trial.

Comes now the defendant The Puget Sound Navigation Company and petitions the Court and prays that the Court grant to the defendant The Puget Sound Navigation Company a new trial of the above-entitled cause for the following causes materially affecting the substantial rights of this defendant:

1. Insufficiency of the evidence to justify the verdict rendered in said cause.
2. Error in law occurring at the trial of the cause.

And further in support of this petition to defendant desires to specify the following particular errors occurring at the trial:

Error of the Court in allowing the plaintiff to answer the question propounded to her by her attorney relative to the average earnings of the alleged deceased R. O. Lavender, to which she answered, "Well, he could earn anywhere from fifteen to eight-

een hundred dollars a year; that is what he would average.”

Error in allowing the plaintiff to answer the following questions propounded by the plaintiff’s attorney: “At what price?” (Answer) “Well, they would give him \$50.00 a month, and then a percentage—I don’t know—it would amount to \$1500.00 a year or more. The year before it did, and it would amount to more this year.” Which answer the defendant moved to strike, which motion was denied by the Court and an exception allowed.

Error in allowing the plaintiff to testify as to the time of the death of R. O. Lavender, over the defendant’s objection, it appearing that the plaintiff had no knowledge of said death except as told her by others, and that there is no evidence in this case of the death of the said R. O. Lavender.

Error in allowing the witness A. H. Dohl to answer the question propounded by plaintiff’s attorney as follows:

“State what, if anything, you heard said with regard to getting out a boat,” over the defendant’s objection. Upon which said witness testified to conversations between himself and other people than the officers of the boat.

Error in allowing the said witness Dohl to testify to the condition of the port in the steamer “Lydia Thompson” after the same had been placed aboard

the boat and error of the Court in refusing to strike out such testimony relating to the condition of the port after the "Lydia Thompson" had landed at Olga, upon the defendant's motion.

Error of the Court in allowing the said witness Dohl to answer the question: "Could that fastener, if there had been one there, have gotten out when the port got out?" To which the defendant objected, and which objection was overruled and an exception allowed to the defendant, and to which the witness answered as follows: "Not unless it was rusted or practically broke, because it was not there when I went down and after that I went out and called Mr. Grover's attention to that."

Error in allowing the said witness to answer the question as follows: "Was there any rope about there when you went down"? To which the defendant objected, which objection was overruled and an exception allowed, and to which the witness answered as follows: "The first time there was not because there was no port when I went down the first time.

Error in allowing the said witness to answer the following question propounded by the plaintiff's attorney: "Was there any rope connected with the fastener or where the fastener should have been?" To which the defendant objected, which objection was overruled and an exception noted, and to which the

witness answered: "No, there was no rope when I went down the first time."

Error of the Court in allowing witness R. H. Hohl to answer the question propounded by plaintiff's attorney relating to his examination of the port in question after it had been replaced upon the boat. "Did you find anything—well state those conditions." And the supplemental question "Olga; is that it now?" To which the witness answered: "Yes, Olga, and the port was not there and I was desirous of seeing it and so after they left the boat we went down and the port was"—At which point the defendant objected, which objection was overruled and an exception noted for the defendant, to which the defendant proceeded to answer, "The port was a board and had a thing to set in and had screws on the end to fasten—on one end it had a fastening and on the other end it didn't. We examined this after we left Olga."

Error of the Court in allowing the said witness to answer the question, "If the port was in the condition that you then found it, what would be the result?" To which the defendant objected, which objection was overruled and an exception noted for the defendant, and which question was restated to the witness as follows: "If a man were to open those doors with the port in the condition that you then found it in, what would be the probable result?" To

which the witness answered, "Leaning against the port he would go overboard with it." Upon which the said witness further testified in answer to the question, "How did Mr. Lavender get in the water, if you know? Do you know how he got in the water?" "He fell in with the port"; although this witness afterwards testified that he was asleep when the accident happened.

Error of the Court in allowing said witness upon redirect examination to answer to the question, "Now, you say that you know that the man went out through that port; how do you know if you didn't see him?" To which the defendant objected and which objection was overruled and an exception noted for the defendant. "I was told by one of the"—At which point the defendant further objected, and to which the witness further answered, "I went below later on and I expect it was the fireman—it was a man in the hole—explained it to us how he went out." Which question was repeated to the witness as follows: "You can answer the question then Mr. Hohl." "Well, I went down below and the man, I expect it was the fireman—he was in the hole—told me how he went out and that was the reason." And upon the further question being propounded, "What did he say, just give his exact words as near as you can remember." "I cannot tell you—he explained the way—I could not tell you the

words”; and the further question, “Well, what was the way—give it in your own words as nearly as you can.” “Well, as I said, he opened the upper doors and went out; that was the explanation I received.”

Error of the Court in refusing to strike the answer of the witness E. J. Grover to the question, “What did you next do after the boat had started on and given up the man?” (Answer) “I turned to the captain and told him that it was a cold-blooded piece of murder as I thought.”

Error of the Court in allowing the witness Grover to answer the question, “Now, can you describe to the jury, Mr. Grover, what would naturally take place in a man’s opening that port or freight gangway?” To which the defendant objected, which objection was overruled and an exception noted, which the witness answered as follows: “Do you wish me to tell what I have seen them doing when they are opening the doors? I have seen them open this port on that same boat.” And the further question: “Then you may state that”; which was also objected to and overruled and an exception noted, and to which the witness answered as follows: “I have seen them take and push out the doors to fasten—push out the doors and then they would lift up the port and unfasten it if it is fastened; and if it is not fastened, of course, it would give way, but where it is fastened I have seen them unfasten it and take and

swing it out and bring it in endwise; that was the way I have seen them open this particular port."

And the further error in allowing the same witness to answer the question: "If this port, after these doors are unclosed which embraced it, and a man was pulling these around—if the port was unfastened what would be the probable result?" Which was objected to and which objection was overruled and an exception noted, and to which the witness answered: "The man and the port both would go out, because the port is set in just exactly like that (illustrating)."

And the further error of the Court in allowing the witness to proceed in volunteering the further answer over the defendant's objection and exception to the Court's ruling: "If that is the outside of the vessel the port is inside of it. We will say this is the port here, the port is set in just like that exactly. It is across like that, so that it has to be fastened in to keep from going out. It is set in just like that and this holds it from going any farther. That could not come in and it could not get by this, and I don't know that it is quite that large; it might be a little taller there and there is a fastener that goes right through the ship's side and a plank comes out here and the fastener is fastened by a screw on the inside that tightens up. Now on the one side the fastener was there and on the other it was not. In order to

take that port out they have to unfasten it and push it that way and swing it out and bring it in endwise. That was the way they opened it.”

Further error of the Court in admitting in evidence Plaintiff's Exhibit “A,” purporting to be a copy of a certificate of inspection specifying the number of crew required on the steamer “Lydia Thompson.”

Further error of the Court in denying defendant's motion for a nonsuit at the close of the plaintiff's evidence.

Error of the Court in refusing to admit in evidence Defendant's Exhibit No. 1 for identification.

Error of the Court in refusing to instruct the jury to bring in a verdict for this defendant as moved for by the defendant at the close of the case.

And for further points wherein the evidence was insufficient to sustain the verdict; the defendant claims that the evidence was insufficient in the following particulars, to wit:

1. That there was no evidence in this case that the defendant The Puget Sound Navigation Company was the owner or operator of the “Lydia Thompson” at the time when R. O. Lavender is claimed to have met his death, or was in any way responsible therefor.

2. That there is no sufficient legal evidence that plaintiff in this cause sustained such a relation to the said R. O. Lavender at the time he is claimed to have met his death, or was in any way responsible therefor.

2. That there is no sufficient legal evidence that R. O. Lavender did meet his death.

3. That there is no sufficient evidence that plaintiff in this cause sustained such a relation to the said R. O. Lavender at the time he is claimed to have met his death as to entitle her to any recovery in this case.

4. That there was no evidence in this case, as to how the said R. O. Lavender came to his death, in case he did die.

5. That there was no evidence in this case that the port, which the plaintiff claimed in her pleadings to be defective, was defective at the time the said R. O. Lavender is claimed to have come to his death.

6. That there was no evidence that the steamer "Lydia Thompson" was insufficiently manned at the time said R. O. Lavender is alleged to have died.

7. That there is no evidence that there was any negligence on the part of the crew of the "Lydia Thompson" in attempting to save the said R. O. Lavender.

8. That the jury by their answer to the interrogatories propounded by the defendant, have eliminated any such negligence.

9. That the jury by their finding in favor of the defendants Barlo and Stanley have decided that there was no negligence on the part of the officers of

said steamer "Lydia Thompson," and that any other evidence of negligence in attempting to save the said R. O. Lavender would have been that of a fellow-servant.

10. That the answer of the jury to the interrogatories and their special findings thereon are inconsistent with the general verdict against the defendant The Puget Sound Navigation Company.

And which said motion and petition for new trial was after argument by counsel for and against the motion, respectively, and after due consideration by the Court, on the 17th day of September, 1906, overruled, and to which ruling the defendant Puget Sound Navigation Company was granted an exception by the Court; and,

Whereas, the Court did on the 9th day of July, 1906, upon the motion of the defendant Puget Sound Navigation Company, and by and with the assent of the plaintiff herein, cause to be entered the following order:

Order.

Now, upon this 9th day of July, 1906, upon the motion of the defendant, and upon the consent of the plaintiff, made in open court;

It is ordered that the defendant shall have thirty days from the date of this order, to wit, from the 9th day of July, 1906, in which to serve and file a bill of exceptions in the above-entitled cause.

Done in open court this 9th day of July, 1906.

_____,
Judge.

And whereas the Court did, on the 24th day of July, 1906, by and with the consent of the plaintiff and said defendants, cause to be entered an order extending the time for serving and filing a bill of exceptions to the first day of October, 1906; and

Whereas, on the 9th day of July, 1906, the plaintiff and defendant entered into the following stipulation, to wit:

Stipulation.

It is hereby stipulated and agreed by and between Byers & Byers, attorneys for the plaintiff, in the above-entitled cause, and Ira Bronson & D. B. Trefethen, attorneys for the defendant The Puget Sound Navigation Company, that the motion for new trial and the disposition of the same by the above-entitled Court may be included in the bill of exceptions in this said cause, and that said motion for new trial and the order disposing of the same by the Court shall constitute a part of said bill of exceptions.

Dated at Seattle, Washington, this 9th day of July, 1906.

(Signed) BYERS & BYERS,
Attorneys for Plaintiff.

(Signed) IRA BRONSON and
D. B. TREFETHEN,
Attorneys for Defendant.

Now, therefore, in furtherance of justice and that right may be done, the defendant The Puget Sound Navigation Company tenders and presents the foregoing as its bill of exceptions in this case to the action of the Court, and prays that the same may be allowed and filed and sealed by the Court and made a part of the record, and the same is accordingly done the 3d day of December, 1906.

C. H. HANFORD,

Judge.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation), and SAMUEL BARLO and
CHARLES STANLEY,

Defendants.

Petition for Writ of Error.

Comes now the defendant Puget Sound Navigation Company herein, and respectfully alleges that on or about the 29th day of June, 1906, a verdict was rendered in the above-entitled cause assessing damages

in favor of the plaintiff and against the Puget Sound Navigation Company in the sum of fifty-five hundred dollars (\$5,500.00), judgment thereon being entered by this Court on the 9th day of July, 1906, in said sum aforesaid against said Puget Sound Navigation Company, in which judgment and the proceeding had prior thereunto in this cause certain errors were committed, to the prejudice of the defendant Puget Sound Navigation Company, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this defendant, Puget Sound Navigation Company, respectfully prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit aforesaid.

IRA BRONSON and
D. B. TREFETHEN,

Attorneys for Defendant, Puget Sound Navigation
Company.

[Endorsed]: Petition for Writ of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jan. 3, 1907. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation), and SAMUEL BARLO and
CHARLES STANLEY,

Defendants.

Order Allowing Writ of Error.

This cause having come on to be heard on this 3d day of January, 1907, upon the petition for a writ of error made by the defendant Puget Sound Navigation Company, by its attorneys, Ira Bronson and D. B. Trefethen, said petition, having been duly filed herein and presented to this Court praying for allowance of a writ of error, and an assignment of errors intended to be urged by it having been also duly filed, and said defendant Puget Sound Navigation Company praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court for the Ninth Judicial Circuit, and that such other and further pro-

ceedings may be had as may be proper in the premises;

Now, therefore, on consideraion thereof, this Court does now allow the aforesaid writ of error upon the defendant Puget Sound Navigation Company. giving a bond according to law in the sum of eight thousand dollars, which shall operate as a supersedeas and cost bond.

Done in open court this 3d day of January, 1907.

C. H. HANFORD,

Judge.

[Endorsed]: Order Allowing Writ of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jan. 3, 1907. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation), and SAMUEL BARLO and
CHARLES STANLEY,

Defendants.

Assignment of Errors.

The defendant Puget Sound Navigation Company, in this action in connection with its petition for a writ of error, makes the following assignments of error, which it avers occurred upon the trial of the cause, to wit:

1. Insufficiency of the evidence to justify the verdict rendered in said cause.

2. Error in law occurring at the trial of said cause.

3. Error of the Court in allowing the plaintiff to answer the question propounded to her by her attorneys relative to the average earnings of the alleged deceased R. O. Lavender, to which she answered, "Well, he could earn anywhere from fifteen to eighteen hundred dollars a year; that is, what he would average."

4. Error in allowing the plaintiff to answer the following question propounded by the plaintiff's attorney: "At what price?" (Answer) "Well, they would give him \$50.00 a month, and then a percentage—I don't know—it would amount to \$1500.00 a year or more. The year before it did, and it would amount to more this year." Which answer the defendant moved to strike, which motion was denied by the Court, and an exception allowed.

5. Error in allowing the plaintiff to testify as to the time of the death of R. O. Lavender, over the defendant's objection, it appearing that the plaintiff had no knowledge of said death except as told her by others, and that there is no evidence in this case of the death of the said R. O. Lavender.

6. Error in allowing the witness A. H. Dahl to answer the question propounded by plaintiff's attorney as follows:

"State what, if anything, you heard said with regard to getting out a boat," over the defendant's objection. Upon which said witness testified to conversations between himself and other people then the officers of the boat.

7. Error in allowing the said witness Dahl to testify to the condition of the port in the steamer "Lydia Thompson" after the same had been placed aboard the boat, and error of the Court in refusing to strike out such testimony relating to the condition of the port after the "Lydia Thompson" had landed at Olga upon the defendant's motion.

8. Error of the Court in allowing the said witness Dahl to answer the question: "Could that fastener, if there had been one there, have gotten out when the port got out?" To which the defendant objected, and which objection was overruled and an exception allowed to the defendant, and to which the witness answered as follows: "Not unless it was rusted or

practically broke, because it was not there when I went down, and after that I went out and called Mr. Grover's attention to that."

9. Error in allowing the said witness to answer the question as follows: "Was there any rope about there when you went down?" To which the defendant objected, which objection was overruled and an exception allowed, and to which the witness answered as follows: "The first time there was not because there was no port when I went down the first time."

10. Error in allowing the said witness to answer the following question propounded by the plaintiff's attorney: "Was there any rope connected with the fastener or where the fastening should have been?" To which the defendant objected, which objection was overruled and an exception noted, and to which the witness answered: "No, there was no rope when I went down the first time."

11. Error of the Court in allowing witness R. H. Hohl to answer the question propounded by plaintiff's attorney relating to his examination of the port in question after it had been replaced upon the boat. "Did you find anything—well, state those conditions." And the supplemental question: "Olga; is that it now?" To which the witness answered: "Yes, Olga, and the port was not there, and I was desirous of seeing it, and so, after they left the boat, we went down and the port was—" At which point

the defendant objected, which objection was overruled, and an exception noted for the defendant, to which the defendant proceeded to answer, "The port was a board and had a thing to set in and had screws on the end to fasten—on one end it had a fastening and on the other end it didn't. We examined this after we left Olga."

12. Error of the Court in allowing the said witness to answer the question, "If the port was in the condition that you then found it, what would be the result?" To which the defendant objected, which objection was overruled, and an exception noted for the defendant, and which question was restated to the witness as follows: "If a man were to open those doors with the port in the condition that you then found it in, what would be the probable result?" To which the witness answered, "Leaning against the port he would go overboard with it." Upon which the said witness further testified in answer to the question, "How did Mr. Lavender get in the water, if you know? Do you know how he got in the water?" "He fell in with the port"; although this witness afterwards testified that he was asleep when the accident happened.

13. Error of the Court in allowing said witness upon redirect examination to answer the question, "Now, you say that you know that the man went out through that port; how do you know if you didn't

see him?" To which the defendant objected, and which objection was overruled and an exception noted for the defendant. "I was told by one of the— At which point the defendant further objected, and to which the witness further answered, "I went below later on and I expect it was the fireman—it was a man in the hole—explained it to us how he went out." Which question was repeated to the witness as follows: "You can answer the question then, Mr. Hohl." "Well, I went down below, and the man, I expect it was the fireman—he was in the hole—told me how he went out, and that was the reason." And upon the further question being propounded, "What did he say, just give his exact words as near as you can remember." "I cannot tell you—he explained the way—I could not tell you the words," and the further question, "Well, what was the way—give it in your own words as nearly as you can." "Well, as I said, he opened the upper doors and went out; that was the explanation I received."

14. Error of the Court in refusing to strike the answer of the witness E. J. Grover to the question: "What did you next do after the boat had started on and given up the man?" (Answer.) "I turned to the Captain and told him that it was a cold-blooded piece of murder, as I thought."

15. Error of the Court in allowing the witness Grover to answer the question, "Now can you de-

scribe to the jury, Mr. Grover, what would naturally take place in a man opening that port or freight gangway?" To which the defendant objected, which objection was overruled, and an exception noted; which the witness answered as follows: "Do you wish me to tell what I have seen them doing when they are opening the doors? I have seen them open this port on that same boat." And the further question: "Then you may state that"; which was also objected to and overruled and an exception noted, and to which the witness answered as follows: "I have seen them take and push out the doors to fasten—push out the doors, and then they would lift up the port and unfasten it if it is fastened; and if it is not fastened, of course, it would give way, but where it is fastened I have seen them unfasten it and take and swing it out and bring it in endwise; that was the way I have seen them open this particular port."

16. Error of the Court in allowing the same witness to answer the question: "If this port, after these doors are unclosed which embraced it, and a man was pulling these around—if the port was unfastened what would be the probable result?" Which was objected to and which objection was overruled and an exception noted, and to which the witness answered: "The man and the port both would go out, because the port is set in just exactly like that (illustrating)."

17. Error of the Court in allowing the witness to

proceed in volunteering the further answer over the defendant's objection and exception to the Court's ruling: "If that is the outside of the vessel, the port is inside of it. We will say this is the port here. the port is set in just like that exactly. It is across like that, so that it has to be fastened in to keep from going out. It is set in just like that, and this holds it from going farther. That could not come in and it could not get by this, and I don't know that it is quite that large; it might be a little taller there and there is a fastener that goes right through the ship's side and a plank comes out here and the fastener is fastened by a screw on the inside that tightens up. Now, on the one side the fastener was there, and on the other it was not. In order to take the port out they have to unfasten it and push it that way and swing it out and bring it in endwise. That was the way they opened it."

18. Error of the Court in admitting in evidence Plaintiff's Exhibit "A," purporting to be a copy of a certificate of inspection specifying the number of crew required on the steamer "Lydia Thompson."

19. Error of the Court in denying defendant's motion for nonsuit at the close of the plaintiff's evidence.

20. Error of the Court in refusing to admit in evidence Defendant's Exhibit No. 1 for identification.

21. Error of the Court in refusing to instruct the jury to bring in a verdict for this defendant as moved for by the defendant at the close of the case.

And for particular points wherein the evidence was insufficient to sustain the verdict; the defendant claims that the evidence was insufficient in the following particulars, to wit:

1. That there was no evidence in this case that the defendant The Puget Sound Navigation Company was the owner or operator of the "Lydia Thompson" at the time when R. O. Lavender is claimed to have met his death, or was in any way responsible therefor.

2. That there is no sufficient legal evidence that R. O. Lavender did meet his death.

3. That there is no sufficient evidence that plaintiff in this cause sustained such a relation to the said R. O. Lavender at the time he is claimed to have met his death as to entitle her to any recovery in this case.

4. That there is no evidence in this case as to how the said R. O. Lavender came to his death, in case he did die.

5. That there was no evidence in this case that the port, which the plaintiff claimed in her pleadings to be defective, was defective at the time the said R. O. Lavender is claimed to have come to his death.

6. That there was no evidence that the steamer "Lydia Thompson" was insufficiently manned at the time said R. O. Lavender is alleged to have died.

7. That there is no evidence that there was any negligence on the part of the crew of the "Lydia Thompson" in attempting to save the said R. O. Lavender.

8. That the jury, by their answer to the interrogatories propounded by the defendant, have eliminated any such negligence.

9. That the jury, by their finding in favor of the defendants Barlo and Stanley, have decided that there was no negligence on the part of the officers of said steamer "Lydia Thompson," and that any other evidence of negligence in attempting to save the said R. O. Lavender would have been that of a fellow-servant.

10. That the answer of the jury to the interrogatories and their special findings thereon are inconsistent with the general verdict against the defendant The Puget Sound Navigation Company.

11. Error in that the Court, on the 17th day of September, 1906, overruled the motion made by the defendant Puget Sound Navigation Company for a new trial of said cause.

12. Error in the Court not making the charge to the jury in refusing to state propositions requested by defendant Puget Sound Navigation Company in the following instances:

Error in refusing to give the third instruction by the Court which reads:

“That an employer is only bound to use ordinary and reasonable care in affording the employee a safe place and safe appliances with which to work, and is not bound to furnish the very best or latest or most approved appliances if they are not ordinarily or generally used.”

13. Error in the Court's instruction to the effect that it was the duty of the defendant to operate the boat so as not to expose the employees to danger of injury or death, upon the ground that that would practically make the defendant an insurer, in the absence of a limitation.

14. Error in the instruction of the Court that it was the duty of the defendant to make such efforts as were possible to make the rescue, on the ground that the duty of the defendant is simply that of making all reasonable efforts.

15. Error in the instruction of the Court that the plaintiff in this case is required to prove at least one of the three conditions which the Court enumerated, from which the jury might infer that the proof of any one of those three conditions would justify a verdict.

16. Error in the instruction of the Court to the jury that as a matter of law or fact Mr. Lavender met his death from drowning, on the ground that there is no evidence of his death positively.

17. Error in the instruction which the Court gave in connection with the inquiry of the jury, to the effect that if there was a defect in its construction that would be sufficient evidence of negligence of the defendant.

17. Error in the instruction of the Court relative to the watchman, and the failure, if any, of the vessel to have a watchman, or about keeping a watchman upon the deck, insofar as the jury might infer that the sending away of this particular watchman from his duties might have resulted in his death, if such an inference could be drawn.

18. Error in the instruction of the Court that the employee is not required to frequently inspect the place or appliances with which he is employed and about which he is employed, as it is the duty of the employer, on the ground that it is just as much the duty and obligation of the employee to advise himself as it is the duty of the defendant to keep the place in repair.

Wherefore the said defendant Puget Sound Navigation Company respectfully prays that the judgment of the United States Circuit Court for the Western District of Washington, Northern Division, may be reversed.

IRA BRONSON and
D. B. TREFETHEN,

Attorneys for Puget Sound Navigation Company.

[Endorsed]: Assignment of Errors. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jan. 3, 1907. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

MARY R. LAVENDER,

Defendant in Error,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation),

Plaintiff in Error,

and

CHARLES STANLEY and SAMUEL BARLO,
Defendants in Error.

Writ of Error (Copy).

The President of the United States: To the Honorable Judges of the Circuit Court of the United State for the Ninth Circuit in and for the Western District of Washington, Northern Division, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment, of a plea which is in said Circuit Court, before you, between Mary R. Lavender, plaintiff, and Puget Sound Navigation Com-

pany, defendant, manifest error has happened to the great damage of the said Puget Sound Navigation Company, defendant, as by its petition appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, with this writ, so that you have the same at San Francisco, State of California, in said Circuit, on or before the 2d day of February, 1907, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. MELVILLE W. FULLER,
Chief Justice of the United States, this 3d day of

Citation to Defendant in Error. (Copy).

The United States of America,
Ninth Judicial Circuit,—ss.

To Mary R. Lavender, defendant in error, and to
Byers and Byers, Her Attorneys, and to Charles
Stanley and Samuel Barlo, and to Ira Bronson
and D. B. Trefethen, Their Attorneys, Greeting:

You, and each of you, are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to be holden at the city of San Francisco, state of California in said Circuit within thirty (30) days from the date of the filing of this citation, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein Puget Sound Navigation Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Puget Sound Navigation Company, plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable C. H. HANFORD, Judge of the United States Circuit Court for the Western District of Washington, Northern Division, within

*In the United States Circuit Court for the Ninth Ju-
dicial Circuit.*

MARY R. LAVENDER,

Defendant in Error,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation),

Plaintiff in Error,

and

CHARLES STANLEY and SAMUEL BARLO,

Defendants in Error.

Bond on Writ of Error.

Know all men by these presents, that we, Puget Sound Navigation Company, as principal, and Charles E. Peabody and Frank E. Burns, as sureties, are held and firmly bound unto the defendant in error, Mary R. Lavender in the full and just sum of eight thousand dollars, to be paid to the said Mary R. Lavender, her certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 3d day of January, 1907.

Whereas, lately in the Circuit Court of the United States for the Western District of Washington, Northern Division, in a suit pending in said Court between Mary R. Lavender, plaintiff, and Puget Sound Navigation Company, defendant, a judgment was rendered against said Puget Sound Navigation Company in the sum of fifty-five hundred dollars (\$5500.00), and the said Puget Sound Navigation Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Mary R. Lavender, citing and admonishing her to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, in the State of California, in said Circuit, on or before thirty (30) days next from this date; and whereas, the Honorable C. H. Hanford, Judge of the Circuit Court of the United States for the Western District of Washington, Northern Division, on the 3d day of January, 1907, entered an order allowing a writ of error and fixing the amount of bond to be made in this case as a cost and supersedeas bond in the said amount of eight thousand dollars above set forth;

Now, therefore, the condition of the above obligation is such that if said Puget Sound Navigation Company shall prosecute said Writ of Error to ef-

fect, and answer all damages and costs if it fail to make said plea good, and if the said Puget Sound Navigation Company will satisfy and perform the judgment or order heretofore made in this said cause by the Honorable C. H. Hanford, Judge of the Circuit Court of the United States, for the Western District of Washington, Northern Division, which judgment has been appealed from by a writ of error, in case said judgment shall be affirmed, and any order or judgment which the said United States Circuit Court of Appeals for the Ninth Judicial Circuit may render or make, or order to be rendered or made by the said Circuit Court of the United States for the Western District of Washington, Northern Division, then the above obligation to be void, else to remain in full force, virtue and effect.

It is expressly agreed by the sureties hereto that in case of the breach of the conditions above named, or any of said conditions, the United States Circuit Court of Appeals for the Ninth Judicial Circuit, or any other court, may, upon notice to said sureties of not less than ten (10) days proceed summarily in the above-entitled cause to ascertain the amount which such sureties are bound to pay on account of such

breach and may render judgment therefor against them and award execution therefor.

PUGET SOUND NAVIGATION COMPANY,
By CHARLES E. PEABODY,
President.

And FRANK E. BURNS,
Treasurer.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND,

[Seal] By A. P. BURWELL,
Attorney in Fact.

Attest by: JOHN A. WHALLEY,
Attorney in Fact and General Agent.

The above bond is hereby approved this 3d day of
January, 1907.

C. H. HANFORD,
Judge.

[Endorsed]: Bond on Writ of Error. Filed in the
U. S. Circuit Court, Western Dist. of Washington.
Jan. 3, 1907. A. Reeves Ayres, Clerk. R. M. Hop-
kins, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation) et al.,

Defendants.

Acceptance of Service.

We hereby accept service of the following papers,
this 3d day of January, 1907, to wit:

Filed copy of petition for writ of error;

Filed copy of order allowing writ of error;

Filed copy of writ of error;

Filed copy of bond on writ of error;

Citations to defendant in error; and

Filed copy of assignment of errors.

BYERS & BYERS,

Attorneys for Defendant in Error, Mary R. Laven-
der.

IRA BRONSON and

D. B. TREFETHEN,

Attorneys for Defendants in Error, Samuel Barlo
and Charles Stanley.

[Endorsed]: Acceptance of Service. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jan. 4, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a Corporation), CHARLES STANLEY and SAMUEL BARLO,

Defendants.

Praecipe for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of record on appeal as follows: appearances, answer, reply, order allowing amended complaint, amended complaint, record of day's trial, June 28, 1906, record of day's trial, June 29, 1906, verdict, order extending time for filing bill of exceptions, judgment, petition for new trial, order re bill of exceptions, order denying petition for new trial, notice re bill of exceptions, proposed bill of exceptions, notice of application to have bill of exceptions certified, order settling bill of ex-

ceptions, bill of exceptions, petition for writ of error, order allowing writ of error, assignment of error, writ of error, citation, bond on writ of error, acceptance of service.

IRA BRONSON,
Attorney for Defendants.

[Endorsed]: Praecipe filed in the U. S. Circuit Court, Western Dist. of Washington, Jan. 14, 1907. A. Reeves Ayres, Clerk. By W. D. Covington, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1296.

MARY R. LAVENDER,

Plaintiff and Defendant in Error,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation),

Defendant and Plaintiff in Error,

and

CHARLES STANLEY and SAMUEL BARLO,
Defendants and Defendants in Error.

Clerk's Certificate to Transcript.

United States of America,
Western District of Washington,—ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the Western District of Washington, do hereby certify the foregoing one hundred and ninety-five (195) typewritten pages, numbered from 1 to 195, inclusive, to be a full, true and correct copy of so much of the papers, record and proceedings in the above, and therein entitled cause, as, by the praecipe of the attorneys for defendant and plaintiff in error, on file in said cause and a copy of which is included in the foregoing record, I am required to certify and transmit to the United States Circuit Court of Appeals, for the Ninth Circuit in return to the writ of error issued in said cause; and that the foregoing constitutes the return to the annexed writ of error.

I certify that the original of each of said papers and proceedings is now on file and of record in the office of the clerk of the said Circuit Court, at Seattle in said district.

I further certify that I annex hereto and herewith transmit the original citation and writ of error issued in said cause.

I further certify that the cost of preparing and certifying the foregoing return to writ of error is the

sum of \$151.60, and that said sum has been paid to me by Ira Bronson and D. B. Trefethen, attorneys for the Puget Sound Navigation Company, a corporation, defendants and plaintiffs in error above mentioned.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 17th day of January, 1907.

[Seal]

A. REEVES AYRES,
Clerk.

By R. M. Hopkins,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

MARY R. LAVENDER,

Defendant in Error,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation),

Plaintiff in Error,

and

CHARLES STANLEY and SAMUEL BARLO,

Defendants in Error.

Writ of Error (Original).

The President of the United States: To the Honorable Judges of the Circuit Court of the United

States for the Ninth Circuit in and for the Western District of Washington, Northern Division, Greeting:

Because in the Record and Proceedings, as also in the rendition of the judgment, of a plea which is in the said Circuit Court, before you, between Mary R. Lavender, plaintiff, and Puget Sound Navigation Company, defendant, manifest error has happened to the great damage of the said Puget Sound Navigation Company, defendant, as by its petition appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, with this writ, so that you have the same at San Francisco, State of California, in said Circuit, on or before the 2d day of February, 1907, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 3d day

of January, 1907, and in the Independence of the United States of America 131.

[Seal]

A. REEVES AYRES,

Clerk of the Circuit Court of the United States, for the Ninth Circuit, in and for the Western District of Washington, Northern Division.

By R. M. Hopkins,

Deputy Clerk.

Allowed by:

C. H. HANFORD,

Judge.

[Endorsed]: Original. No. 1296. In the Circuit Court of the United States for the Western District of Washington, Northern Division. Mary R. Lavender vs. Puget Sound Navigation Co. Writ of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jan. 3, 1907. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

*In the United States Circuit Court of Appeals, for
the Ninth Judicial Circuit.*

MARY R. LAVENDER,

Defendant in Error,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation),

Plaintiff in Error,

and

CHARLES STANLEY and SAMUEL BARLO,

Defendants in Error.

Citation to Defendant in Error (Original).

The United States of America,

Ninth Judicial Circuit,—ss.

To Mary R. Lavender, Defendant in Error, and to
Byers and Byers, Her Attorneys, and to Charles
Stanley and Samuel Barlo, and to Ira Bronson
and D. B. Trefethen, Their Attorneys, Greeting:

You, and each of you, are hereby cited and ad-
monished to be and appear at a session of the
United States Circuit Court of Appeals for the
Ninth Judicial Circuit, to be holden at the city of
San Francisco, State of California, in said Circuit
within thirty (30) days from the date of the filing
of this citation, pursuant to a writ of error filed
in the clerk's office of the Circuit Court United
States for the Western District of Washington,

Northern Division, wherein Puget Sound Navigation Company is plaintiff in error, and you are defendants in error; to show cause, if any there be, why the judgment rendered against the said Puget Sound Navigation Company, plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable C. H. HANFORD, Judge of the United States Circuit Court for the Western District of Washington, Northern Division, within said Ninth Judicial Circuit, this 3d day of January, 1907.

[Seal]

C. H. HANFORD,
Judge.

We hereby accept due personal service of this citation on behalf of Mary R. Lavender, defendant in error, this 3d day of January, 1907.

BYERS & BYERS,
Attorneys for Mary R. Lavender, Defendant in Error.

We hereby accept due personal service of this citation on behalf of Charles Stanley and Samuel Barlo, defendants in error, this 3d day of January, 1907.

IRA BRONSON and
D. B. TREFETHEN,
Attorneys for Charles Stanley and Samuel Barlo,
Defendants in Error.

[Endorsed]: Original. No. 1296. In the Circuit Court of the United States for the Ninth Judicial Circuit. Mary R. Lavender, Defendant in Error, vs. Puget Sound Navigation Co., Plaintiff in Error. Citation to Defendant in Error. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jan. 4, 1907. . A. Reeves Ayres, Clerk. W. D. Covington, Dep.

[Endorsed]: No. 1425. United States Circuit Court of Appeals for the Ninth Circuit. Puget Sound Navigation Company (a Corporation), Plaintiff in Error, vs. Mary R. Lavender, Charles Stanley and Samuel Barlo, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States Circuit Court for the Western District of Washington, Northern Division.

Filed January 28, 1907.

F. D. MONCKTON,
Clerk.

At a stated term, to wit, the October term A. D. 1906, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the eighteenth day of February, in the year of our Lord, one thousand nine hundred and seven. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, District Judge.

No. 1425.

PUGET SOUND NAVIGATION COMPANY (a Corporation),

Plaintiff in Error,

vs.

MARY R. LAVENDER, CHARLES STANLEY,
and SAMUEL BARLO,

Defendants in Error.

**Order that Motion to Dismiss be Denied upon Filing
of New Bond on Writ of Error.**

This cause coming on to be heard this eighteenth day of February, 1907, upon the motion of the defendants in error to dismiss the writ of error heretofore taken in this cause, and upon the hearing thereof, and upon the application of the plaintiff in error, it is ordered by the Court that the plaintiff in error

have leave to file forthwith a new and original bond in the above-entitled cause in the sum of eight thousand and no/100 (\$8,000.00) dollars, conditioned according to law as a supersedeas bond in the above-entitled cause, and the same to be filed nunc pro tunc, as regards the taking and effecting of the writ of error herein, and the superseding and staying of the execution of the judgment appealed from thereby; the said bond when taken, approved and filed to operate as a supersedeas in this cause pending this appeal, and the motion of the defendants in error to dismiss said writ of error shall thereupon be denied.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. 1425.

MARY R. LAVENDER,

Defendant in Error,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation),

Plaintiff in Error,

and

CHARLES STANLEY and SAMUEL BARLO,

Defendants in Error.

New Bond on Writ of Error.

Know all men by these presents, That we, Puget Sound Navigation Company, as principals, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto the defendant in error, Mary R. Lavender in the full and just sum of eight thousand and no/100 (\$8,000.00) dollars, to be paid to the said Mary R. Lavender, her certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of February, 1907.

Whereas, lately in the Circuit Court of the United States for the Western District of Washington, Northern Division, in a suit pending in said Court, between Mary R. Lavender, plaintiff, and Puget Sound Navigation Company, defendant, a judgment was rendered against said Puget Sound Navigation Company in the sum of fifty-five hundred and no/100 (\$5500.00) dollars, and the said Puget Sound Navigation Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Mary R. Lavender, citing and admonishing her to be and appear at a

session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the city of San Francisco, in the State of California, in said Circuit, on or before thirty days next from this date; and whereas, the Honorable C. H. Hanford, Judge of the Circuit Court of the United States for the Western District of Washington, Northern Division, on the third day of January, 1907, entered an order allowing a writ of error and fixing the amount of bond to be made in this case as a cost and supersedeas bond in the said amount of eight thousand and no/100 (\$8,000) dollars above set forth; and whereas the sufficiency of said bond has been questioned in that the name of the surety herein, to wit, the Fidelity and Deposit Company of Maryland, was omitted from the body of said bond, and whereas the said plaintiff in the writ of error therein desires to file a new bond upon said writ of error to correct said motion, and whereas an order has been made and entered by the above-entitled court allowing said bond to be filed and fixing the amount thereof at the sum of eight thousand and no/100 (\$8,000.00) dollars for the purpose of superseding the judgment appealed from by the writ of error herein, and in all respects conforming to said bond.

Now, therefore, the condition of the above obligation is such that if said Puget Sound Navigation Company shall prosecute said writ of error to effect,

and answer all damages and costs if it fail to make said plea good, and if the said Puget Sound Navigation Company will satisfy and perform the judgment or order heretofore made in this said cause by the Honorable C. H. Hanford, Judge of the Circuit Court of the United States, for the Western District of Washington, Northern Division, which judgment has been appealed from by a writ of error, in case said judgment shall be affirmed, and any order or judgment which the said United States Circuit Court of Appeals for the Ninth Judicial Circuit may render or make, or order to be rendered or made by the said Circuit Court of the United States for the Western District of Washington, Northern Division, then the obligation to be void, else to remain in full force, virtue and effect.

It is expressly agreed by the surety hereto that in case of the breach of the conditions above named, or any of said conditions, the United States Circuit Court of Appeals for the Ninth Judicial Circuit, or any other court, may, upon notice to said surety of not less than ten (10) days proceed summarily in the above-entitled cause to ascertain the amount which such surety is bound to pay on account of such breach and may render judgment therefor against them and award execution therefor; said surety expressly acknowledges the authority of Ira Bronson to execute

this bond upon and on behalf of the Puget Sound Navigation Company.

PUGET SOUND NAVIGATION COM.

By IRA BRONSON,

Attorney.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND.

[Seal]

By S. T. MASCUBBIN,

Attorney in Fact.

Approved: WM. B. GILBERT,

Senior United States Circuit Judge.

[Endorsed]: No. 1425. U. S. Circuit Court of Appeals, for the Ninth Circuit. Puget Sound Navigation Company (a Corporation), Plaintiff in Error, vs. Mary R. Lavender, Charles Stanley and Samuel Barlo, Defendants in Error. New Bond on Writ of Error. Filed February 18, 1907, nunc pro tunc Pursuant to Order this day Entered. F. D. Monckton, Clerk.

*In the Circuit Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

1296.

MARY R. LAVENDER,

Plaintiff and Defendant in Error,

vs.

PUGET SOUND NAVIGATION COMPANY,

Defendant and Plaintiff in Error.

CHARLES STANLEY and SAMUEL BARLO,

Defendants and Defendants in Error.

Clerk's Certificate to Plaintiff's Exhibit "A."

United States of America,

Western District of Washington,—ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the Western District of Washington, do hereby certify that the hereto attached exhibit, marked "Plff. Ex. A" is an original exhibit filed in said Circuit Court, in said cause, on the 28th day of June, 1906, and used in evidence upon the trial of said cause. That I now transmit said exhibit to the Circuit Court of Appeals for the Ninth Circuit, there to be considered and inspected in connection with the record on appeal in this cause.

heretofore prepared, certified and forwarded to said Circuit Court of Appeals, as directed by the above-entitled Circuit Court for the Western District of Washington; a certified copy of which order so directing the said transmission is hereto attached and made a part of this certificate.

In witness whereof, I have hereunto set my hand and affixed my official seal at Seattle, in said District, this 30th day of April, 1907.

[Seal]

A. REEVES AYRES,
Clerk.

By R. M. Hopkins,
Deputy Clerk.

*In the United States Circuit Court, for the Ninth
Circuit, Western District, Northern Division,
Washington.*

No. 1296.

MARY R. LAVENDER,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY (a
Corporation) et al.,

Defendants.

Order for Transmission of Plaintiff's Exhibit "A."

Now, upon this 30th day of April, 1907, upon motion of the plaintiff herein and upon consent of the defendant herein, it is ordered that Plaintiff's Ex-

hibit "A" be transmitted to the United States Circuit Court of Appeals.

Done in open Court this 30th day of April, 1907.

C. H. HANFORD,

Judge.

We assent to the entry of the foregoing order.

IRA BRONSON, and

D. B. TREFETHEN.

[Endorsed]: Order. Filed in the U. S. Circuit Court, Western Dist. of Washington. April 30, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

The foregoing is a full, true and correct copy of an original order made on the 30th day of April, 1907.

Witness my hand and official seal this 30th day of April, 1907.

[Seal]

A. REEVES AYRES,

Clerk.

By R. M. Hopkins,

Deputy.

Plaintiff's Exhibit "A."

(Copy.)

Form 2113.

BY AUTHORITY OF THE UNITED STATES
OF AMERICA.

Two copies of this Certificate must be exposed, under glass, where passengers and other persons can see them.—(Section 4423 Revised Statutes.)

CERTIFICATE OF INSPECTION
FOR PASSENGER STEAMERS OF OVER 100
GROSS TONS.

Sound Passenger Steamer Lydia Thompson,
State of Washington,
District of Puget Sound,—ss.

[Stamped and written across face of certificate:]
This certificate expires March 4, 1905.

Application having been made in writing to the undersigned, Inspectors for this District, to inspect the Steamer "Lydia Thompson," of Port Townsend, in the State of Washington, whereof Puget Sound Navigation Company is owner and C. A. Call is master, and having performed that duty in accordance with the provisions of Title LII, Revised Statutes, and the Rules and Regulations of the Board

of Supervising Inspectors, on the 4th day of March, 1904, DO CERTIFY that the said vessel was built at Port Angeles, in the State of Washington, in the year 1893; that the Hull is constructed of wood, and, as shown by official records, is of 202 gross tons; that the said vessel has 8 Staterooms and 20 Berths, and is allowed to carry 50 passengers, viz: 50 First-cabin, Second-cabin, and Deck or Steerage Passengers; also, is required to carry a full complement of officers and crew, consisting of (1 Master and Pilot), 2 Mate, 2 Engineers, 2 Firemen, 1 Watchmen, and 3 Deck Crew. (Allowed to carry 4 persons when needed in Steward's and other departments not connected with the navigation of the vessel.) That the said vessel is provided with 1 triple expansion Condensing Engine of $11\frac{1}{4}$, 14, 25 inches diameters of cylinders and $1\frac{2}{12}$ feet stroke of piston, and one Boiler 10 feet in length and 92 inches in diameter, made of iron pipe and steel drums, in the year 1900, and is allowed a steam pressure of 200 pounds to the square inch, and no more. The said vessel is permitted to navigate, for one year, the waters of the Puget Sound, between Seattle and Whatcom, and touching at intermediate ports, a distance of about miles and return.

THE FOLLOWING PARTICULARS OF INSPECTION ARE ENUMERATED, VIZ:

Load-line draft*.....	feet.....	inches.
Water-tight cross bulkheads.....	No.....	
Has permanent stairways from main to upper deck		yes
Anchors 2 and cables 1.....	No. 3	
Drags.....	No.....	
Has wire tiller ropes and chain.....		yes
Has iron rods or chains.....		
Has additional steering apparatus, consisting or		relief tackles
Has wire bell pulls.....		yes
Has signal tubes from pilot-house to engine-room		yes
Has name in letters six inches long on top of pilot horse ..		yes
Location of steam whistle.....		correct
Compasses.....	No. 1	
Has signal lights.....	6"x7"	
Metal lifeboats.....	No. 2	
Wooden lifeboats..	No. 2	
Collapsible (folding) lifeboats.....	No.....	
Every lifeboat has painter, life lines, and not less than 4 oars ..		yes
Life rafts.....	No. 2	
Life preservers.....	No. 65	

*To be filled in only for seagoing steam vessels.

Has line-carrying projectiles and means of propelling them.....

Hand fire pumps.....No. 2

Hose, internal diameter of.....1½ inches

Hose, length of.....150 feet

Fire buckets....No. 24

Water barrels..No. 4

Water tanks.....No. 1

Axes.....No. 6

Stoves securely fastened to deck.....yes

Has two copies steamboat law on board.....yes

Has two copies pilot rules on board.....yes

Boilers.....No. 1

 When built.....1900

 Where built..Detroit, Mich.

 By whom built.....Detroit W. T. Boiler Co.

Steam drums plate 2, steel.....22" diameter

 Thickness of.....5/16"

 Tensile strength of.....60,000

 Ductility of....54%

 Record in local inspectors' office at Seattle, Wn.

Boiler shell drilled.....1.....;

 thickness of plate found.....100 inch

Longitudinal seams.....riveted;

 holes.....

Steam pressure allowed.....200 lbs.

Hydrostatic pressure applied400 lbs

Flues	No.
Length	
Diameter	
Thickness	
Tubes	No. 154
Length	91½"
Diameter	3"
Thickness	No. 12 gauge
Safety valves.....	No. 1; aggregate area 7.07
Weight adjusted to blow off at 200 lbs. pressure.	
Locked-up safety valves	No.
Steam gauges	No. 2
Gauge cocks	No. 3
Low-water gauges	No. 1
Fusible plugs	No.
Feed pumps for boilers	No. 2
Steam pumps, double acting	No. 2
Donkey boilers.....	No.
Diameter of	
Thickness of plate	
Tensile strength of plate	
Ductility of plate.....	
Record in office of local inspectors at.....	†
Steam pressure allowed to donkey boiler....	lbs.

†Inspectors may in all cases accept the record as given in this Certificate when the Steamer is inspected in a district other than that where the record is kept, noting in Form 2112 the date of Certificate and place of inspection.

Hydrostatic pressure applied to donkey boiler
.....lbs.

BION B. WHITNEY,
Inspector of Hulls,
ROBERT A. TURNER,
Inspector of Boilers.

City of Seattle,
State of Washington,—ss.

Sworn to before me this 19th day of Mar. 1904.
Custom-house, Seattle, Wash., Mar. 19, 1904.

E. E. KELLY,
Deputy Collector.

I hereby certify that copies have been issued in
this office.

E. E. KELLY,
Dep. Coll. of Customs.

This certificate expires March 4, 1905.

The above form of Inspection Certificate was
adopted by the Board of Supervising Inspectors of
Steam Vessels at the annual meeting held in January,
1903, and approved by the Secretary of the Treasury
February 12, 1903.

GEO. UHLER,
Supervising Inspector-General,
President of the Board.

Amended form approved:

GEO. B. CORTELYOU,
Secretary of Commerce and Labor.

[Endorsed]: (Copy.) Form 2113. Passenger Steamer Lydia Thompson. Gross Tonnage, 202. Owner: The Puget Sound Navigation Co. Certified Copies Issued Mar. 19, 1904. Inspectors, Bion B. Whitney, Robert A. Turner. Received at Custom-House, Mar. 19, 1904. I certify this to be a true copy of the original Certificate of Inspection, on file in this office. Chas. Miller, Deputy Collector. Custom-House, Port Townsend, Wash., June 26th, 1906.

1296. Plffs. Ex. "A." Filed in the U. S. Circuit Court, Western Dist. of Washington. June 28, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

No. 1425. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit "A." Received May 3, 1907. F. D. Monckton, Clerk.